65

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 262.

THE CHAPMAN AND DEWEY LAND COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES H. BIGELOW, N. P. BIGELOW, L. P. WALKER, AND F. H. HARTSHORN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED APRIL 20, 1906.

(20,209.)

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1 *Writ of Error.*

Filed March 16th, A. D. 1906. P. D. English, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Arkansas, before you, or some of you, between The Chapman and Dewey Land Company, appellant and Charles H. Bigelow, N. P. Bigelow, L. P. Walker, and F. H. Hartshorn, respondents, a manifest error hath happened, to the great damage of the said Chapman and Dewey Land Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and six.

[The Seal of the Circuit Court, U. S. A., Western Division of East. Dist., Ark.]

W. P. FIELD,
Clerk of the Circuit Court of the United States for the Western Division of Eastern District of Arkansas.

Allowed by
B. B. BATTLE,
Presiding Judge and Acting Chief Justice of the Supreme Court of the State of Arkansas.

1½ [Endorsed:] 5609. Chapman & Dewey Land Co. *v.* Charles H. Bigelow *et al.* Writ of Error to Sup. Court of U. S. Filed M'ch 16th, 1906. P. D. English, Cl'k.

STATE OF ARKANSAS, *in the Supreme Court, ss:*

In obedience to the command of the foregoing Writ of Error, I have made and hereby certify under my hand and the seal of the Supreme Court of Arkansas, a true, full and complete transcript of

the record, and all proceedings had and done in the Supreme Court, and the Chancery Court of Poinsett County, together with all things done and had in the cause stated in the caption hereof.

In testimony whereof, I, Peyton D. English, Clerk of said Supreme Court, hereto set my hand and affix the seal of said Supreme Court at my office in the City of Little Rock, the Capital of said State, this the 28th day of March A. D. 1906.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH, *Clerk.*

2 In the Supreme Court of the United States.

CHAPMAN AND DEWEY LAND COMPANY, Plaintiff in Error,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER, and F. H. HARTSHORN, Defendants in Error.

Assignment of Errors.

And now comes the petitioner in error, Chapman and Dewey Land Company, by Ashley, Gilbert & Dunn, its attorneys, and says that in the record and proceedings aforesaid of said Supreme Court of the State of Arkansas in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of the plaintiff in error, to-wit:

First. Said Supreme Court of Arkansas erred in entering judgment affirming the judgment and decree of the said Chancery Court of Poinsett County, Arkansas, against the plaintiff in error, and dismissing its bill.

Second. Said Supreme Court of Arkansas erred in not reversing the said judgment and decree of the Chancery Court of Poinsett County, Arkansas, aforesaid.

Third. Said Supreme Court of Arkansas erred in sustaining the action of the said Chancery Court of Poinsett County, Arkansas, in overruling the objections of the plaintiff in error to the testimony of the witnesses, John M. Biggs, Charles S. Odom and James Anthony, offered by the defendants in error.

Fourth. Said Supreme Court of Arkansas erred in sustaining the action of said Chancery Court of Poinsett County, Arkansas, admitting in evidence over the objection of the petitioner in error the depositions of said John M. Biggs, Charles S. Odom and James Anthony, "and each of said depositions, thereby permitting
3 an attempt by oral evidence to impeach and contradict the official plats, field notes and survey made under the direction of the General Land Office of the United States, or to attack by such oral evidence the finality or correctness of the ruling of the Secretary of the Interior, to the effect that the unsurveyed lands in controversy were, at the date of the Swamp Land Grant, covered by a permanent body of water, and that the surveyed fractional sections and parts of sections owned by plaintiff in error were, in such surveys and plats,

properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purposes in this case because the Secretary of the Interior has not failed or refused to pass upon but has actually officially passed upon such question of fact, especially as none of said witnesses caimed to have known anything about the *locus in quo* earlier than 1878, and such oral testimony as to the condition existing since 1878 is incompetent, immaterial and irrelevant for the purpose of attempting to show the condition of the *locus in quo* September 28, 1850."

Fifth. Said Supreme Court of Arkansas erred in overruling the objection of the petitioner in error to so much of the testimony of the witness, James Anthony, as attempted to show by oral evidence the condition of the *locus in quo* at the date of the Swamp Land Grant, September 28, 1850, especially in view of the fact that said Anthony had already testified that he did not know anything about it earlier that 1874, and in overruling the motion of petitioner in error to strike out said testimony.

Sixth. Said Supreme Court of Arkansas erred in basing its said opinion and judgment upon evidence incompetent to contradict the plats and field notes of the surveys made under the direction and authority of the Commissioner of the General Land Office of the United States.

Seventh. Said Supreme Court of Arkansas erred in basing its said opinion and judgment upon evidence incompetent and in-
4 sufficient to contradict the plats and field notes of the surveys made under the direction and authority of the Commissioner of the General Land Office of the United States.

Eighth. Said Supreme Court of Arkansas erred in its holding that the Surveys and the field notes and plats thereof introduced in evidence by the petitioner in error, and made under the direction and authority of the General Land Office of the United States did not show the true physical condition of the *locus in quo* at the date of said survey, and in holding that said *locus in quo* was not a permanent body of water at the date of said surveys, but was land at the date of said surveys.

Ninth. That the Supreme Court of Arkansas erred in holding that the *locus in quo* was land and not water at the date of the Government survey and in effect holding that the title to the *locus in quo* is in the United States and therefore not in the plaintiff in error as the riparian owner.

Tenth. Said Supreme Court of Arkansas erred in not holding upon all the evidence in said cause that the *locus in quo* was at the date of the survey in Township 12 North Range 6 East, and Township 12 North Range 7 East under the direction of the General Land Office of the United States, and at the date of the Grant by the United States to the State of Arkansas of the surveyed lands in said Township, a permanent body of water.

Eleventh. Said Supreme Court of Arkansas erred in not holding that the title to the *locus in quo* is in the petitioner in error.

Twelfth. Said Supreme Court of Arkansas erred in construing a certain note among the field notes of the said United States Survey

of Township 12 North Range 6 East, as showing or tending to show that the *locus in quo* was at the date of the survey, land and not a permanent body of water.

Thirteenth. Said Supreme Court of Arkansas erred in
5 holding that there has been no change in the physical conditions existing in and about the *locus in quo,* since the making of said United States surveys; and that the field notes and plats of said surveys were not conclusive evidence in this case of physical conditions existing in and around the *locus in quo* at the date of said surveys and at the date of the grant by the United States to the State of Arkansas of the surveyed lands bordering upon the *locus in quo;* and that the oral evidence in this case was competent or sufficient to contradict the official record of said surveys.

Fourteenth. Said Supreme Court of Arkansas erred in not holding the bottom of Cut-off Lake to belong to the petitioner in error as riparian owner after finding that said Cut-off Lake was a water boundary at the date of the said United States surveys of certain surveyed fractional sections of land now belonging to the petitioner in error.

Fifteenth. Said Supreme Court of Arkansas erred in holding the letter of the Secretary of the Interior, dated November 17th, 1902, to have been properly excluded from evidenc in this cause, and in wholly disregarding and holding to be of no binding force or effect upon anyone the said letter of the Secretary of the Interior offered in evidence by the plaintiff in error at the trial of this cause in the Chancery Court of Poinsett County, Arkansas.

Sixteenth. Said Supreme Court of Arkansas erred in sustaining the following rulings of said Chancery Court of Poinsett County, Arkansas, at the trial of said cause, to-wit:

1.

Excluding from evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered as *res adjudicata* on the question of fact as to whether or not the *locus in quo* was a body of water at the date of the Swamp Land Grant, September 28, 1850.

6 2.

Excluding from the evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered as a finding against the St. Francis Leevee District, grantors of and privies in estate with defendants, made on the application and at the instance of said St. Francic Levee District, and involving the identical lands in controversy.

3.

Excluding from evidence the opinion and finding of the Secretary of the Interior of the United States, dated November 17, 1902, offered for the purpose of showing that the unsurveyed regions on the Government plats of Township twelve (12) North, Ranges six (6) and seven (7) East, were permanent bodies of water at the date

of the Swamp Land Grant, September 28, 1850, and that such regions belonged to the riparian owners of sections properly meandered on such permanent bodies of water.

4.

Excluding from the evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered for the purpose of showing that the United States Government never patented the region shown as water on the Government plats of Township 12 North, Ranges 6 and 7 East, to the State of Arkansas as swamp land, but that such region went by the grant of fractional sections meandered on such bodies of water by the law of riparian ownership.

5.

Ruling that the Secretary of the Interior of the United States could not make a decision that would be binding on the State of Arkansas.

6.

Ruling that the Secretary of the Interior could not make
7 a binding decision between the State of Arkansas and the riparian owner as to what was the condition of the *locus in quo* at the time of the Swamp Land Grant, September 28, 1850.

7.

Excluding from evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered for the purpose of showing that the Land Department had decided that these fractional sections having been meandered upon blank unsectionalized portions of the township, as shown by the Government plat, such blank unsectionalized portions are not surveyed, but are unsurveyed; and for the further purpose of showing that having never been patented, surveyed or located, they could not pass to the State of Arkansas as swamp lands.

8.

Excluding from the evidence the finding and the opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered for the purpose of showing that, in making the surveys of public lands, the United States Land Department does not treat as surveyed lands portions of townships which appear upon the plats of such surveys as unsectionalized which are not subdivided into legal subdivisions, and which are meandered on such township plats as bodies of water.

9.

Excluding from evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, offered for the purpose of showing that, by the concurrent action of the United States Government and the State of Arkansas, the *locus in quo* had been ommitted from the selection, approval, con-

firmation, platting and patenting of lands in said Township 12 North, Ranges 6 and 7 East.

8

10.

Excluding from evidence the following specific finding contained in the decision of the Secretary of the Interior of the United States, dated November 17, 1902, as separately offered in evidence by appellant: "these lands have not been patented, approved or confirmed to the State, and have not been sold by the State to any person;" such language being a finding by the Land Department of the United States that said lands have never been patented, approved, or confirmed to the State.

11.

Excluding from evidence for any purpose the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902.

12.

In admitting in evidence over the objection of plaintiff, depositions of John M. Biggs, Charles S. Odom and James Anthony, and each of said depositions thereby permitting an attempt by oral evidence to impeach and contradict the official plats, field notes and survey made under the direction of the Land Office of the United States, or to attack by such oral evidence the finality or correctness of the ruling of the Secretary of the Interior to the effect that the unsurveyed lands in controversy were, at the date of the Swamp Land Grant, covered by a permanent body of water, and that the surveyed fractional sections and parts of sections owned by plaintiff were, in such surveys and plats, properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purposes in this case because the Secretary of the Interior has not failed or refused to pass upon but had actually officially passed upon such question of fact, especially as none of said witnesses claimed to have known anything about the *locus in quo* earlier than 1878, and such oral testimony as to conditions existing since 1878 is incompetent, immaterial and irrelevant for the purpose of attempting

9 to show the condition of the *locus in quo* September 28, 1850.

13.

In overruling the plaintiff's motion to strike out so much of the deposition of James Anthony as attempted to show by oral evidence the condition of the *locus in quo* at the date of the Swamp Land Grant, September 28, 1850, especially in view of the fact that said Anthony had already testified that he did not know anything about it earlier than 1874.

14.

Excluding from evidence patent from the State of Arkansas to W. D. Mallory of certain lands in the same Township, offered for the purpose of showing that the State of Arkansas has never claimed

any title to the lands in controversy, and has treated said lands as unconfirmed and unpatented from the United States to the State of Arkansas.

15.

In affirming the decree of the Chancery Court of Poinsett County, Arkansas, in this case dismissing appellant's complaint for want of equity.

Wherefore, the petitioner in error prays that said errors be corrected and reversed in the Supreme Court of the United States and that the judgment of said Supreme Court of Arkansas in said cause be reversed, and that the title of plaintiff in error to the lands in controversey be quieted as prayed in its original petition.

ASHLEY, GILBERT & DUNN,
Attorneys for Plaintiff in Error.

Filed March 16th, 1906.

P. D. ENGLISH, *Clerk.*

10 [Endorsed:] In the Supreme Court of the United States. Chapman and Dewey Land Co. Pl't'ff in Error *v.* Charles H. Bigelow *et al.*, Def'ts in Error. Assignments in Error. Filed March 16th A. D. 1906. P. D. English Clerk. Ashley, Gilbert & Dunn, Attorneys, Massachusetts Building, 8th and Wall Streets, Kansas City, Mo.

11 In the Supreme Court of the State of Arkansas.

CHAPMAN AND DEWEY LAND COMPANY, Plaintiff in Error,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER and F. H. HARTSHORN, Defendants in Error.

Petition for Writ of Error.

To the Honorable the Chief Justice of the Supreme Court of the State of Arkansas:

The petition of the Chapman and Dewey Land Company respectfully shows that on or about the 6th day of January, 1906, the Supreme Court of the State of Arkansas, made and entered a final order and judgment herein in favor of Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, defendants in error, and against your petitioner, said Chapman and Dewey Land Company, plaintiff in error, in which final order and judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear hereafter in this petition and from the assignment of errors which is filed with this petition. And your petitioner states that the Supreme Court of the State of Arkansas is the highest

Court of the State of Arkansas in which a decision in this suit and matter could be had.

And your petitioner states that on the 29th day of January, 1903, it filed a Bill in Equity in the Chancery Court of Poinsett County, Arkansas, against said Charles H. Bigelow, *et al.*, defendants, to remove a cloud from plaintiff's title to certain lands described in said bill, and for the purpose of having declared void, invalid and of no effect the several conveyances under which defendants claimed title.

That your petitioner claimed title to the land in contro-
12 versy under an act of Congress entitled "An Act to Enable the State of Arkansas and Other States to Reclaim the Swamp Lands Within their Limits," approved September 28th, 1850, in pursuance of which, surveyed sections and parts of fractional sections in fractional Township Twelve (12), North of the base line, in Range Six (6) East of the fifth principal meridian, and in Township Twelve (12) North of the base line, in Range Seven (7) East of the fifth principal meridian, and in Poinsett County, Arkansas, were duly selected, approved and patented to the State of Arkansas as part of the Swamp Land Grant, and acquired by your petitioner by mesne conveyances from the State of Arkansas; that the legal subdivisions of Sections so acquired by your petitioner, were meandered along and around a permanent body of water, as shown by the official surveys made under the direction and by authority of the United States, and the field notes and plats of said surveys showing the lines of the Sections, subdivisions and area thereof, the configuration of the land and water, and revealing fully the details of said surveys duly returned to the General Land Office of the United States by the Surveyors of Public Lands of the United States in and for the State of Arkansas. The body of water on which said Sections and parts of Sections were meandered is on said Government plats and in said field notes designated as "Sunk Lands," "Saint Francis River Sunk Lands," Hatchie Coon Sunk Lands," "Cut-off Lake" and "A Large Lake," and said body of water is shown by said surveys and the field notes and plats thereof to have been a single permanent body of water forming a lake and meandered as such on said plats and in said field notes.

Your petitioner claimed title to the land forming the bottom of said body of water, or lake, as riparian owner under and by virtue of the said grant from the United States to the State of Arkansas of the fractional sections and parts of sections of surveyed land around and bordering upon said water, and under and by virtue
13 of the subsequent grant without reservation of said fractional sections and parts of sections, by the State of Arkansas to the persons through and under whom your petitioner acquired title to said fractional sections and parts of sections by mesne conveyances.

The defendants in said cause, defendants in error herein, claimed to have purchased said land so forming the bottom of said lake or permanent body of water from certain grantees of the Directors of the "Saint Francis Levee District," created and organized by the act of the Legislature of Arkansas of February 15th, 1893, which fixed the boundaries of said levee district and empowered and made it the

ty of said Board to levy annually a tax on all lands in said levee trict to be assessed according to the increased value or betterment imated to accrue from protection against floods from the Mississi pi River by reason of the construction of levees; the alleged title said Board of Directors of the St. Francis Levee District, being eged by said defendants to have been acquired by said Board of rectors from the State of Arkansas under and by virtue of an Act the Legislature of said State passed March 29th, 1893, donating said district, for the purpose of building and maintaining levees, the lands in the State lying within said district, except the sixnth sections, and all right, title or interest that the State had or ght acquire to any lands within said district, except the sixteenth tions during the five years immediately after said Act by reason forfeiture for taxes.

Defendants in said cause, defendants in error herein, in their swer admit that the surveys, referred to in plaintiff's bill, were de under the direction and authority of the United States Governnt, and were, with the field notes thereof, returned to the Surveyor neral at the General Land Office in Washington, and they admit t the region in question was indicated on the Government plats in the same way that a body of water is usually indicated, but allege "that the record of said survey shows it to have been land at that time and not water," and that the meandered es "were run as boundaries and not for the purpose of finding the antity of land in the several subdivisions, for which the purchaser uld pay," and allege that "the surveyors in making said survey re easily mistaken as to the location of the Saint Francis River, ring made the survey at a time when it would be out of its banks, l being for that reason unable to get within several miles of it," l allege that "it is manifest that in some cases they would call for nt Francis River when all they could have meant was that they l reached water which was the overflow from the Saint Francis ver or some Bayou or cut-off of said stream," and they allege "the t to be that the so-called sunk lands were a body of lands lying both sides of the Saint Francis River 'sunk,' and in the rainy son easily overflowed," and allege that "at the time of the survey meandered lines were run around this body of sunk and overved lands as if it had been 'a body of water.' "

And said defendants in their cross bill filed with their answer ged that the title acquired by them by mesne conveyances from State of Arkansas through the Saint Francis Levee Board, was uired by said State of Arkansas from the United States in the owing manner:

They were granted to the State of Arkansas by an Act of Conss of the United States, approved on the 28th day of September, 50, an Act known as the Swamp and Overflow Act.

That it was a part of said Act of Congress that it should be the y of the Secretary of Interior as soon thereafter as practicable to ke up an accurate list and plat of such lands as would be, by son of being overflowed, unfit for cultivation and to transmit the ne to the Governor of the State of Arkansas; that subsequently

the Secretary of the Interior included in a list of swamp and overflowed lands transmitted to the Governor of the State of Arkansas the whole of Township 12 North-Range 6 East and Township 12 North-Range 7 East, and a patent for said Townships was granted to the State of Arkansas, and these cross complainants file herewith certified copies of said patent in so far as it affects these townships marked Exhibit "A," to this cross complaint. And by this grant from the United States to the State of Arkansas and the patent from the United States to the State of Arkansas, made after the selection of said lands as swamp lands, the legal title to all lands in said Townships, whether then subdivided into sections or not, passed to the State of Arkansas; and the said legal title so acquired by the State of Arkansas to all lands in said Townships, which had not been laid out in sections by the surveyors for the United States Government, remained in the State of Arkansas until the year 1893."

And your petitioner alleges that on November 17th, 1902, the Secretary of the Interior in response to a letter from the Commissioner of the General Land Office recommending that steps be taken to enjoin the Saint Francis Levee Board from disposing of any of said lands, and to enjoin the purchasers of said lands from said Board from cutting any timber thereon, addressed the following letter to the Commissioner of the General Land Office.

"2469–1902.

NOVEMBER 17, 1902.

The Commissioner of the General Land Office.

SIR: The Department is in receipt of your letter of June 2, 1902, relative to an alleged trespass upon what you term the unsurveyed lands in the northeastern part of Arkansas, known as the 'sunk lands of the New Madrid earthquake.'

The alleged trespassers are persons who claim to have purchased said lands from the Board of Directors of the 'St. Francis Levee District,' created and organized by the act of the Legislature of Arkansas of February 15th, 1893, which fixed the boundaries of said District and empowered and made it the duty of said Board to levy annually a tax on all lands in said levee district, to be assessed according to the increased value or betterment estimated to accrue from protection against floods from the Mississippi river by reason of the construction of levees. At the same session the Legislature of the State passed an act (March 29, 1893) donating to said district, for the purpose of building and maintaining levees, all the lands of the State lying within said district, except the sixteenth section, and all right, title or interest that the State had or might acquire to any lands within said district, except the sixteenth section, during the five years immediately after said act, by reason of forfeiture for taxes.

A special agent of your office states in his report that in an interview with the officers of said Board he learned that it claimed title to the lands in question under said act of March 29, 1893, and also bases its claim upon letters from your office and from the Secretary

f the Interior, declaring, in effect, that if the unsurveyed lands, nown as the 'Sunk Lands,' were, at the date of the township sur-eys, covered by bodies of water and were afterwards uncovered by he recession of the waters, such lands would belong to the owners f the adjacent lands as riparian proprietors, and the United States ould have no authority to survey and dispose of them, assuming hat the lands contiguous to and surrounding the meandered waters ave been disposed of. The special agent expresses the opinion that here is no doubt that at the time of the township surveys these lands ere simply covered by the overflow of the Mississippi river, and that they must be classed as agricultural lands, and not as covered 6 by permanent bodies of water and therefore subject to State or riparian ownership; that 'some of these lands are five miles ide and are covered with the finest timber, which is exceedingly aluable, and when cleared will make fine cotton and corn planta-ions and become some of the most valuable ones in the State.' You ecommend that steps be taken to enjoin the St. Francis Levee Board rom disposing of any of said lands and that the purchasers of the nds from said Board be enjoined from cutting any timber thereon.

The lands in question are in Township 11 to 16 North, inclusive, n Range 6 East, and in Township 12 to 17 North, inclusive, in Range 7 East, which were surveyed at different times from 1841 to 1849. The field notes and the plats of those surveys show that what re now reported to be unsurveyed lands were at the date of the ownship surveys covered by permanent bodies of water that were neandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 to 15 feet. A large portion of the surveyed ands lying along the meander lines are designated in the field notes s overflowed and unfit for cultivation.

The letter of your office and the letter of the Secretary of the Interior, referred to by the special agent as a basis of the claim of he Levee Board, were written in response to a communication from he Chief Engineer of the St. Francis Levee District, of June 25, 1894, to the Secretary of the Interior, in which, referring to the fact hat the unsurveyed part of said townships consisted of lakes and swamps, he says:

The numerous overflows since then have filled up these lakes and swamps very much, and changed largely the general features of he country. To such an extent has this filling up been done that he areas and the depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water. This filling up increases he possibility of drainage and recent cross-sections of that basin show that the whole can be drained into the St. Francis and Little rivers.

He stated that he was informed that the title to these unsurveyed lands yet remains in the government, and as the drainage of the lakes in the St. Francis basin is necessary to the maintenance of he levees, he suggested that the lands be donated to the State or the Levee Board for the purposes stated.

Said letter having been referred to your office, it was stated in

response thereto, by letter of August 25, 1894, that 'when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain and beds of inland non-navigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States, but to the riparian owners.' The Department, by letter of November 20, 1894, concurred in the views of your office and stated that from the facts then appearing the Government had no jurisdiction over said lands and no power to direct their survey.

It appears from a communication by the Chief Engineer of the St. Francis Levee District, dated September 3, 1901, set forth in your letter, that this matter was brought to the attention of the Department in 1894, with a view to having the lands surveyed and disposed of by the Government if it still holds the title. The purpose
17 of the board was to have the title of the Government divested, if it had any, so that the lands might pass into private ownership in order that they may be subject to the tax for their proportion of the cost in constructing levees. He says:

If the General Government has no jurisdiction of these unsurveyed lands and does not claim any, and if a survey of them cannot therefore be made by the Government, then it is the purpose of our Board to have them surveyed and sell them or quit-claim them and place them on our levee tax books, so that they may be taxed for levee purposes and therefore pay their proportion towards the construction of the levees and drains by which they have been and are being so greatly improved and benefited. If the General Government will survey them so that we can tax them when parties buy them from the Government or homestead them, then our purpose will be equally accomplished.

It is not questioned that the portions of said townships, which are represented on the plats of survey as bodies of water are now valuable lands. On the contrary, the Chief Engineer states that he knows of his own personal knowledge that farms of great value are now cultivated in the very bottom or lowest places of some of these unsurveyed lands, but he adds: 'All of this conversion of these low lands is of course due to our levees keeping the overflow out of the low lands, and our drainage systems which afford them drainage.'

It may be mentioned in this connection that by the agreement between the United States and the State of Arkansas, entered into February 23, 1895, and ratified by the Act of April 29, 1898, (30 Stat., 367), the State of Arkansas relinquished to the United States all claim to the swamp lands in said State, except such as had been patented, approved or confirmed to the State at the date of said agreement, but said Act of April 29, 1898, confirmed the title of all persons who had purchased from the State any unconfirmed swamp land and had received a deed for the same. As these lands had not been patented, approved or confirmed to the State, and had not been sold by the State to any person, except perhaps one tract, which

it is alleged had been sold prior to said agreement, the 'St. Francis Levee District' cannot sustain its claims to said lands under the swamp land grant, and unless the title of the Government has been otherwise divested, or its right to said lands was concluded by the approval of the township surveys and the disposal of the adjacent lands, the action of the St. Francis Levee District in disposing of said lands is without warrant or authority and steps should be taken to enjoin it from disposing of the same and its purchasers should be enjoined from cutting the timber thereon.

Therefore the conditions existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps would be taken to prevent depredations on these lands. The returns of the township surveys show upon their face that what are now alleged to be unsurveyed portions of said townships were then actually bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or in any of the papers submitted therewith, to impeach those returns as to the physical conditions of land and water at that time.

The opinion expressed by the Secretary of the Interior in his letter of November 30, 1894, herein referred to, was based
18 upon the decision of the Supreme Court in the case of Hardin *v.* Jordan (140 U. S., 371), assuming that there was no mistake in the surveys and that the lands contiguous to the meander line had been disposed of. In the case of Hardin *v.* Jordan the doctrine was clearly announced that the right and title of a grantee from the United States of public lands bordering on non-navigable lakes and ponds, extends to the center of the lake or pond if the Government has not reserved any right or interest that might pass by the grant or done any act showing an intention to make such reservation. The rights of riparian proprietors are controlled by the respective laws of the States, but that does not affect the question as to whether the General Government is, by disposing of the public lands bordering on non-navigable lakes and ponds, properly meandered, concluded from afterwards exercising jurisdiction over said lands and from disposing of the same. Upon this question the Court said:

It has never been held that the lands under water, in front of such grants, are reserved to the United States, or that they can be afterwards granted out to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render titles uncertain, and to derogate from the value of natural boundaries, like streams and bodies of water.

While the United States does not, by the approval of the survey, and the disposal of lands contiguous to the meander line, part with its title to lands that were erroneously omitted from survey, yet, as stated in the decision of the Court in Hardin *v.* Jordan, *supra*, there should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian lands. It appears upon the face of the township plats of survey, and from the field notes thereof, that the lands in question were at the dates of the survey covered by bodies of water, which

were properly meandered as such, and it does not appear from the report of the special agent that he has any evidence at hand to support his opinion that said lands at the time of survey were simply covered by overflow from the Mississippi river, nor is there anything shown by your letter or by the papers submitted therewith that tends to impeach the returns of the township surveys.

More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the Department in 1894, when the request of the St. Francis Levee District to have said lands surveyed was refused.

The action of the Board of Directors of the St. Francis Levee district in exercising control over said lands appears to have been prompted by the disclaimer of jurisdiction and authority over them by the Government, as expressed in the letters of your office and of the Department, above referred to, and such disclaimer was based upon the information furnished by the records of your office, which show that the authority and jurisdiction of the Government over said lands was terminated by the approval of the surveys and the sale of the lands along the meander lines. It does not appear from anything in the records whether the body of water that once covered the lands in question was navigable or not, but the result would be
the same in either case. If it was a non-navigable body of
19 water the riparian right vested by the sale of the lands along the meander lines by the Government. If it was a navigable body of water the title of the bed, thereof passed out of the United States upon the admission of the State to the Union, and was thereafter subject to the laws of the State. The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the Government over the lands in question having thus terminated, the action of the Department of November 30, 1894, is adhered to, and no further or other action will be taken with reference to said lands.

The papers are herewith returned.

Very respectfully, E. A. HITCHCOCK, *Secretary.*"

This cause coming on to be heard on September 11th, 1903, in the Chancery Court of Poinsett County, Arkansas, a Court of Equity, the plaintiff introduced in evidence without objection the duly authenticated official plats and field notes of the United States hereinbefore mentioned, and proved its title to said fractional sections and parts of sections meandered along and around said permanent body of water under and by virtue of selections by the State of Arkansas, approval thereof by the Secretary of the Interior and two patents from the United States to the State of Arkansas, dated respectively July 29, 1856, and September 28th, 1858, all under the Act of

Congress September 28th, 1850; said patents being specifically stated to be "according to the official plats and surveys of said lands returned to the General Land Office," and under and by virtue of patents from the State of Arkansas, and mesne conveyances thereunder. Which said title of the plaintiff to all said fractional sections and parts of sections was admitted by said defendants, except as to fractional sections six (6) and seven (7) in Township twelve (12) North, range seven (7) East, and the title of the plaintiff to said two last named fractional sections being duly proved by the plaintiff at the trial of said cause without objection on the part of the defendants.

Plaintiff, further to sustain the issues on its behalf, offered
20 a copy of said letter of the Secretary of the Interior, dated November 17, 1902, and hereinbefore fully set out (which was admitted to be genuine by defendants) stating at the time of said offer that the same was sought to be introduced in evidence for the following reasons:

First. Because the above ruling of the Secretary of the Interior is *res adjudicata* on the question of the fact as to whether or not the *locus in quo* was a body of water at the date of the Swamp Land Grant, and because the Secretary of the Interior, as shown in his said letter of November 17, 1902, had decided on the application of the grantor of the defendants, the Saint Francis Levee Board, as to this identical land, that it went to the riparian grantee, the State of Arkansas being riparian grantee under the grant from the United States and the grant of the State being identical with the grant of the United States to the State; and because the ruling of the Secretary of the Interior holding that the unsurveyed portions of Township Twelve (12) North, Ranges Six (6) and Seven (7) East were permanent bodies of water at the date of the Swamp Land Grant, and that they belonged to the riparian owners of sections properly meandered on such permanent body of water was a final decision on said subject.

Second. Because the above ruling of the Secretary of the Interior shows that said Secretary decided that these fractional sections having been meandered according to the plats upon blank unsectionalized portions of the Township, as shown by the Government plats, such blank, unsectionalized portions were not surveyed, but were unsurveyed and therefore were never patented, nor surveyed, nor selected, and could not pass to the State of Arkansas as swamp land.

Third. Because said ruling of the Secretary of the Interior shows that the land in controversy had never been surveyed under the direction of the United States Land Department.

Fourth. Because said ruling of the Secretary of the In-
21 terior shows that in making surveys of public land, the United States Land Department does not treat as surveyed lands portions of townships which appear upon the plats of such surveys as unsectionalized, and are not subdivided into legal subdivisions, and which are meandered on such township plats as bodies of water.

Fifth. Because in said ruling of the Secretary of the Interior, said Secretary says: "As these lands have not been patented, ap-

proved or confirmed to the State, and have not been sold to any person," such language is a finding that the said lands have not been patented, approved or confirmed to the State.

The Court overruled said offers and excluded said decision of the Secretary of the Interior dated November 17th, 1902, and assigned for so doing the following reasons, which duly appear in the bill of exceptions and in the record of said cause, to-wit:

1. That he considered it a question for the Court, and that to so accept the decision of the Secretary of the Interior would be to permit the Secretary to invade the province of the Court.

2. That the Secretary of the Interior could not make a decision that would be binding on the State.

3. That the Secretary of the Interior could not make a decision which would be binding in a contest between the State and the riparian owner as to what was the condition at the time of the Swamp Land Grant.

4. That the decision of the Secretary of the Interior was *ex parte* and therefore could not be binding upon the State.

5. And finally the Court overruled the offer and excluded said decision for all purposes in the following language: "The Court overrules the offers of said plaintiff and excludes said opinion of the Secretary of the Interior from evidence."

The defendants offered in evidence the depositions of certain witnesses, to-wit: John M. Biggs, Charles S. Odom, and James
22 Anthony, by which said depositions it was sought to be shown that the region shown by the said surveys, field notes and plats made under direction of the General Land Office of the United States to have been at the dates of said surveys from 1840 to 1849, a permanent body of water, was not in fact a body of water at the dates of said surveys but was land at said dates. None of said witnesses testified to any knowledge of said region earlier than 1874.

The plaintiff at the time of the offer of said depositions, objected to the same in the following language:

"Plaintiff objects to the deposition of John M. Biggs, Charles S. Odem, and James Anthony, if offered for the purpose, and in so far as they attempt, by inference or otherwise, to impeach or contradict the official plats and field notes of surveys made under the general direction of the General Land Office of the United States, or to attack the finality or correctness of the ruling of the Secretary of the Interior to the effect that the Unsurveyed lands in controversy were at the date of the Swamp Land Grant covered by a permanent body of water and that the surveyed fractional sections and parts of sections owned by Plaintiff were in such surveys and plats properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purpose in this case because the Secretary of the Interior has not only failed or refused, but has actually officially passed on such question of fact, especially as no one of said witnesses claims to have known anything about the *locus in quo* earlier than 1878, and such oral testimony of conditions existing since 1878 is incompetent, immaterial and irrelevant for the

purpose of attempting to show condition of *locus in quo* September 28, 1850."

"The Court thereupon overruled the objection of plaintiff and permitted the introduction of said depositions of Odom, Anthony and Biggs; to the overruling of which objection and the introduction of such evidence, the plaintiff at the time excepted and asked that its exceptions be noted of record, which was done."

and the plaintiff specially objected to a portion of the deposition of said James Anthony and moved to strike it out "in so far as it is attempted to show by oral evidence, the condition of the *locus in quo* at the date of the Swamp Land Grant September 28, 1850, especially in view of the fact that the witness had already testified that he didn't know anything about it earlier than 1874. Which objection and motion was by the Court overruled, to which ruling the plaintiff at the time excepted, and asked that his exceptions be noted of record." And said depositions were admitted in evidence over
23 said objections. All of which is a part of the record and fully appears in the bill of exceptions in said cause.

On the 11th day of September, 1903, said Chancery Court of Poinsett County, Arkansas, rendered a decree that the plaintiff take nothing by its action, and that the plaintiff's bill be dismissed for want of equity.

Said cause was regularly and duly taken by appeal on a bill of exceptions and its accompanying record to the Supreme Court of the State of Arkansas, and was heard by said Supreme Court on the 30th day of October, 1905, on the entire record, including the bill of exceptions, and on the 6th day of January, 1906, said Supreme Court of the State of Arkansas rendered an opinion in which it held, in substance and effect as follows:

1. That the *locus in quo* was land at the date of the surveys made under the direction and authority of the General Land Office of the United States, and at the date of the grant from the United States to the State of Arkansas of the adjacent surveyed lands, and was not a single permanent body of water as indicated by said surveys, and the field notes and plats thereof duly returned to the General Land Office by the Surveyor of Public Lands of the United States in and for the State of Arkansas, except that around a portion of said *locus in quo* the meander lines shown on the plats of said United States surveys, were in fact run along a channel not shown or designated in any of the field notes or plats of said official survey, and along a body of water shown and designated in said plats and field notes as "Cut-off Lake," and that beyond said channel and beyond said "Cut-off Lake," the *locus in quo* at the date of said surveys was land, said plats and field notes to the contrary notwithstanding.

2. That the physical condition of the *locus in quo* has not changed since the making of the surveys aforesaid, and that the por-
24 tions of said *locus in quo* lying beyond said alleged channel, and beyond "Cut-off Lake," was in fact land at the date of said surveys and at all times since, said plats and field notes to the contrary notwithstanding.

3. That a certain note dated May 30, 1849, among the field notes

of said United States Surveys, indirectly showed that the *locus in quo* might have been surveyed in the driest season of the year.

4. That the ruling of the Secretary of the Interior contained in the letter hereinbefore set out, finding the *locus in quo* to have been at the date of said surveys, a permanent body of water, was of no binding force or effect upon anyone and was properly excluded in this cause.

And your petitioner shows that said grounds raised and presented the following Federal questions in said case, namely:

First. Whether said surveys and the field notes and plats thereof made under authority of the United States are not upon the entire record in this case conclusive evidence of the existence at the time the same were made and on the 28th day of September, 1850, of a permanent body of water covering the *locus in quo.*

Second. Whether said surveys and the field notes and plats thereof made under authority of the United States were erroneous and failed to properly show and truly represent physical conditions existing in and about the region surveyed at the date of said surveys.

Third. Whether the field note dated May 30th, 1849, hereinbefore mentioned, could properly be construed as showing or tending to show that the entire *locus in quo* was, at the date of said survey, land, and not a permanent body of water.

Fourth. Whether the finding of the Secretary of the Interior contained in his said letter of November 17th, 1902, based on said plats and field notes, to the effect that the *locus in quo* was a
25 permanent body of water at the date of said surveys, was properly excluded in this cause.

Fifth. Whether said finding of the Secretary of the Interior was of no binding force or effect in this cause for any purpose.

Sixth. Whether under and by virtue of the official record of said surveys made under authority of the United States and under and by virtue of the laws of the United States, and especially the said Act of Congress of September 28th, 1850, and patents issued by the United States, and the rules and regulations of the General Land Office of the United States, and the rulings of the Commissioner of said General Land Office, and of the Secretary of the Interior and the adjudications of the Supreme Court of the United States, the *locus in quo* does not belong to your petitioner as riparian owner, there being no law of the State of Arkansas affecting riparian rights to the contrary.

Seventh. Whether under and by virtue of the official record of said United States surveys, and under and by virtue of the laws of the United States, and especially the said Act of Congress of September 28th, 1850, and patents issued by the United States, and said rules and regulations of said General Land Office, and said rulings of the said Commissioner of the General Land Office, and of the Secretary of the Interior, and the adjudications of the Supreme Court of the United States, your petitioner is not entitled in equity to have its title to the *locus in quo* quieted as against the claims of the defendants in error, the said deeds under which the defendants in error claim declared invalid, void and of no force and effect, and the prayer of the plaintiff's petition in said cause granted.

Eighth. Whether the said letter of the Secretary of the Interior of November 17th, 1902, is not conclusive on any or all the following points:

1. That the said surveys, made under the authority of his
26 Department and the official plat and field notes of said surveys show that at the date of said surveys the *locus in quo* was a permanent body of water.

2. That the *locus in quo* has never been surveyed under authority of the United States and has never been selected by the State of Arkansas as land inuring to it under the Act of Congress of September 28th, 1850, has never been confirmed or approved to said State as swamp or overflowed land by the Secretary of the Interior, and has never been patented to said State by the United States as swamp or overflowed lands.

3. That the *locus in quo* was on September 28, 1850, a permanent body of water.

4. That the State of Arkansas never acquired the *locus in quo* as swamp or overflowed land inuring to it under said Act of Congress of September 28, 1850.

5. That the *locus in quo* does not belong to the United States.

6. That the *locus in quo* belongs to the riparian owners, there being no law of the State of Arkansas concerning and affecting riparian ownership, to the contrary.

Petitioner further shows that Federal questions were involved in said case, to-wit, as hereinbefore set out, and that said decision and final judgment of said Supreme Court of Arkansas called in question an authority exercised under the United States, and was against its validity, and that said decision was against the title, right, privilege and immunity specially claimed by the petitioner in error under a commission held and authority exercised under the United States, and was repugnant to and in conflict with the laws of the United States and the rules and regulations of the General Land Office of the United States made in pursuance of said laws, and the rulings and decisions and acts of the Secretary of the Interior, and of the Commissioner of said General Land Office, and acts done under direction and authority of said Commissioner of the General
27 Land Office, and was against the title, right, privilege and immunity belonging to and specially claimed by the petitioner under and by virtue of patents duly issued by the proper officers under authority of the United States in pursuance of the laws of the United States, and especially the said Act of Congress of September 28th, 1850; and that said judgment was contrary thereto; that a decision of said Federal questions was necessary to the judgment rendered.

And your petitioner states that said opinion and judgment of the Supreme Court of Arkansas was erroneous for the reasons shown in the assignment of errors filed herewith.

Wherefore, the premises considered, this plaintiff in error and petitioner says that it has been denied the rights, privileges and immunities belonging to it under the United States and the laws thereof by said final judgment of the Supreme Court of Arkansas, and prays

that it may be awarded a writ of error by this Honorable Court issuing out of the Supreme Court of the United States addressed to the Honorable Court for the purpose of enabling said Supreme Court of the United States to examine and correct the errors assigned and for such other and further proceedings as to the said Supreme Court of the United States may seem proper.

ASHLEY, GILBERT & DUNN,
Attorneys for Plaintiff in Error.

Allowed
B. B. BATTLE,
Presiding Judge of the Supreme Court of Arkansas and Acting Chief Justice.

Filed March 16th A. D. 1906.
P. D. ENGLISH, *Clerk.*

28 [Endorsed:] In the Supreme Court of the State of Arkansas. Chapman and Dewey Land Co. Pl't'ff in Error *v.* Charles H. Bigelow *et al.* Def'ts in Error. Petition for a Writ of Error. Filed March 16th A. D. 1906. P. D. English Clerk. Ashley, Gilbert & Dunn, Attorneys, Massachusetts Building, 8th and Wall Streets, Kansas City, Mo.

29 *Bond.*

Know all men by these presents, That we, the Chapman & Dewey Land Company, a corporation organized and existing under and by virtue of the laws of Missouri, as principal, and C. A. Pratt as surety, are held and firmly bound unto Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn in the full and just sum of One Thousand Dollars, to be paid to the said Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, and their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 16th day of March in the year of our Lord One Thousand Nine Hundred and Six.

Whereas, lately at the November Term 1905 of the Supreme Court of the State of Arkansas, and on the 6th day of January, 1906, in a suit pending in said court between the Chapman & Dewey Land Company of Kansas City, Missouri, appellant, and Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, defendants and respondents, a judgment was rendered against the said Chapman & Dewey Land Company of Kansas City, Missouri, and the said Chapman & Dewey Land Company having obtained a writ of error and filed a copy thereof in the Clerk's office of the said court to reverse the judgment in the aforesaid suit and a citation directed to the said Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn citing and admonishing them to appear at the Supreme Court of the United States at Washington within thirty days of the date thereof.

Now the condition of the above obligation is such that if the said Chapman & Dewey Land Company of Kansas City, Missouri, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be *good*, else to remain in full force and virtue.

CHAPMAN AND DEWEY
LAND COMPANY,
By W. H. CHAPMAN, *President.*
C. A. PRATT.

Sealed and delivered in presence of
ROBERT S. RODGERS,
As to Chapman & Dewey Land Co.
W. S. GILBERT,
As to C. A. Pratt.

30 *Bond Approved.*

Approved by

B. B. BATTEL,
Chief Justice and Judge of the Supreme Court of the State of Arkansas and Acting Chief Justice.

March 16th A. D. 1906.
P. D. ENGLISH, *Cl'k.*

[Endorsed:] Copy. 5609. Chapman & Dewey Land Co. *vs.* C. H. Bigelow et al. Bond on error. Filed Mch. 16th A. D. 1906. P. D. English Cl'k.

31 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Charles H. Bigelow, N. P. Bigelow, L. T. Walker, and F. H. Hartshorn, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Arkansas wherein Chapman and Dewey Land Company is plaintiff in error and your are defendants in error, to show cause, if any there be, why judgement rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable B. B. Battle presiding Judge and Acting Chief Justice of the Supreme Court of the State of Arkansas this 16th day of March in the year of our Lord one thousand nine hundred and six.

[Seal of the Supreme Court of Arkansas.]

B. B. BATTLE,
Presiding Judge and Acting Chief Justice of the Supreme Court of the State of Arkansas.

Service of the within Citation is hereby acknowledged this the 17th day of March 1906.

N. W. NORTON,
Attorney for Charles H. Bigelow et al., Defendants in Error.

Returned & filed March 19th 1906.
P. D. ENGLISH, *Clerk.*

[Endorsed:] # — Chapman & Dewey Land Co. *vs.* Bigelow *et al.* Citation. Served 3/17/1906 Filed 3/19/1906. P. D. English Clerk.

31½ STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 27th day, being the fourth Monday of November, A. D. 1905, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 6th day of January, 1906, a day of said term, and on certain days therein stated:

Appeal from Poinsett Chancery Court.

CHAPMAN & DEWEY LAND COMPANY, Appellant,
vs.
CHAS. H. BIGLOW ET AL.

32 *Complaint.*

In the Chancery Court of Poinsett County, Arkansas.

Pleas before the Hon. Edward D. Robertson, Chancellor of Poinsett County, on the days hereafter stated.

CHAPMAN & DEWEY LAND COMPANY, Plaintiff,
vs.
CHARLES H. BIGLOW, N. P. BIGLOW, L. T. WALKER, and F. H. HARTSHORN, Defendants.

Complaint in Equity.

The plaintiff Chapman & Dewey Land Company, respectfully states to the Court:

(1.) The plaintiff, Chapman & Dewey Land Company, is a corporation organized under the laws of the State of Missouri and duly authorized to do business in the State of Arkansas. All the defendants above named are non-residents of the State of Arkansas. Said Charles H. Biglow is a resident of St. Paul, Minnesota; said

N. P. Biglow is a resident of Chicago, Illinois; and said L. T. Walker & F. H. Hartshorn are residents of Washburn, Illinois.

(2.) On September 28, 1850, the United States of America by an Act of Congress of that date, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits," granted to the State of Arkansas all the Swamp and overflowed lands made thereby unfit for cultivation, which were situate in said State and theretofore unsold. The test fixed by said act by which to determine whether or not the lands of the United States should pass under said grant, being this: That all legal subdivisions, the greater part of which is wet and unfit for cultivation, shall be within the terms of the grant; but when the greater part of a subdivision is not of that character the whole of it shall be
33 excluded therefrom.

(3.) In pursuance of the provisions of the said Act of Congress surveyed sections and parts of fractional sections in fractional township twelve (12) North of the base line, in range six (6) East of the fifth Principal Meridian, containing seven thousand two hundred thirty-six and 78/100 acres (7236.78), and surveyed sections and part of fractional sections in township twelve (12) North of the base line, in range seven (7) East of the fifth Principal Meridian, containing fourteen thousand three hundred and twenty-one and 5/100 acres (14,321.05); all situate in Poinsett County, State of Arkansas, were duly selected, approved and patented to the State of Arkansas, as the lands inuring to it under the said grant of the United States.

(4.) Prior to the transfer mentioned, surveys had been made of the land in the townships aforesaid, under the direction and authority of the Government of the United States, and the field notes of said survey and plats showing the result thereof, the lines of sections and subdivisions, and area thereof, the configuration of land and water, and revealing fully all of the details of said survey, were returned to the Su-veyor General at the General Land Office in Washington, by the surveyors who made said survey; and certified copies thereof were duly filed in the State Land Office of the State of Arkansas, at Little Rock, Arkansas. The records of the State Land Office at Little Rock, Arkansas, showing the selection, in the said townships and approval thereof and patents to the State of Arkansas, under said act are filed herewith, marked Exhibits "A" and "B" and B1 and B2, respectively. The field notes of said survey are filed herewith, and marked Exhibits "C" and "D" respectively. Plats of said survey are also filed herewith marked Exhibits "E" and "F" respectively. All of which exhibits plaintiff prays may be considered a part of this complaint, as fully as if each detail thereof was alleged, described and set forth herein at
34 length.

(5.) The said survey showed no land whatever in the greater part of township twelve (12) North, range six (6) East. In the northern tier of sections, no land whatever was shown in section one (1); but beginning about seven hundred fifty feet (750) West of the northeast corner of section two (2), a line was run West to a

point fifteen (15) chains West of the northeast corner of section four (4.) From this last point the land was meandered in a southeasterly direction to a point in South East quarter (¼) Section three (3); and thence in a northerly and easterly direction to the point of beginning, so that the tract of land so surveyed bore a triangular appearance. The body of land surveyed as last aforesaid lies at the southern point of an island in the sunk lands of the St. Francis River, known as Hatchie Coon Island. The survey in meandering the southern boundary of this island calls for the margin of the water as the boundary in all cases. In section four (4) the survey showed forty-four and 78/100 (44.78) acres lying in the northeast corner. The survey showed thirty seven and 27/100 acres in the southwest quarter of the northwest quarter of section three (3), the southwest corner of this subdivision being cut off by the meander line. The survey showed thirty-six and 6/100 (36.06) acres in the southwest quarter of section three (3), lying in the northwest corner thereof. It showed fifty-seven and 78/100 (57.78) acres in the west half of the southeast quarter of section three (3); and fifty-eight and 69/100 (58.69) acres in the East half of the south-east quarter of section three (3). The south end of these subdivisions being cut off by the meander line. Said survey shows thirty-one and 28/100 (31.28) acres of land in the southwest quarter of section two (2), lying in the northwest corner thereof; it showed thirty nine and 83/100 (39.83) acres in the southwest quarter of the northwest quarter of section two (2), only 7/100 of an acre being cut off by the meander line from the southeast corner of said subdivision. Said survey showed sixty-three and 85/100 (63.85) acres in the East half of the northwest quarter of section two (2), the missing land required to make a full subdivision being cut off by the meander line from the southeast corner. The said survey also showed forty-seven and 70/100 (47.70) acres in the northeast quarter of section two (2), lying in the northwest corner thereof. All of which details more fully appear from the field notes and plat referred to above. The subdivisions in sections two (2) and three (3), not hereinbefore mentioned, were shown by said survey to be full.

(6.) Said survey showed section thirty-six (36) to be cut wholly into two parts by the right-hand chute of Little River, running from north to south through the middle of the section. This chute was meandered for a boundary of the western and northern lines or boundaries of the land in section thirty-six (36) lying east thereof. Said survey showed seventy-four and 38/100 (74.38) acres in the northeast quarter of said section, and lying in the southeast corner of said subdivision; it showed seventy and 65/100 (70.65) acres in the west half of the southeast quarter of said section, and two and 77/100 (2.77) acres of the south half of the southwest quarter lying east of said chute; the east half of the southeast quarter of said section was shown to be full. That part of section thirty-six (36) lying west of said chute was meandered along said chute for an eastern boundary, and along "cut off Lake" for a northern

boundary. Said survey showed fifty-five and 31/100 (55.31) acres in the east half of the northwest quarter of said section; fifty-six and 13/100 (56.13) acres in the west half of the northwest quarter of said section; seventy-five and 13/100 (75.13) acres in the north half of the southwest quarter of said section; sixty-four and 81/100 (64.81) acres in the south half of the southwest quarter of said section. In surveying section thirty-five (35), the said sunk lands and said "cut off Lake" were meandered for the northern and western boundary. The said survey showed fifty-nine and 82/100 (59.82) acres in the northeast quarter of said section lying in the southeast corner thereof; seventy-four and 84/100 (74.84)
36 acres in the west half of the south east quarter of said section; and the east half of the south east quarter was shown to be full. No land was shown in either of the other subdivisions of said section. All of which details more fully appear from the field notes and plat referred to above.

(7.) In said survey section six (6), seven (7), eighteen (18), nineteen (19) and thirty (30), in township twelve (12) North range seven (7) East, were meandered along the water, the field notes calling for the margin of the sunk lands of the St. Francis River as a boundary; it showed fifty-five and 38/100 (55.38) acres in the north half of the northeast quarter of section six (6); sixty-one and 28/100 (61.28) acres in the south half of the northeast quarter of said section; seventy-one and 32/100 (71.32) acres in the west half of the southeast quarter of said section nine and 45/100 (9.45) acres in the east half of the southwest quarter of said section; the East half of the southeast quarter of said section was shown to be full. Said survey showed fifty-two and 83/100 (52.83) acres in the west half of the northeast quarter of section seven (7); and fifty-five and 86/100 (55.86) acres in the west half of the southeast quarter of said section; and the east half of the east half thereof was shown to be full.

37 The said survey showed seventy-two and 32/100 (72.32) acres in the east half of the northeast quarter of section eighteen (18), and sixty-nine and 45/100 (69.45) acres in the east half of the southeast quarter of said section; it showed sixty-five and 58/100 (65.58) acres in the east half of the northeast quarter of section nineteen; and fifty-eight and 65/100 (58.65) acres in the west half of the northeast quarter of said section; eight and 76/100 (8.76) acres in the south-east quarter of the northwest quarter of said section; forty-five and 18/100 (45.18) acres in the north half of the southwest quarter of said section; sixty-eight and 31/100 (68.31) acres in the south half of the southwest quarter of said section; and twenty-seven and 7/100 (27.07) acres in the south-east quarter of said section. The said land in section nineteen (19) being shown as extending regularly from the northeast corner to the southwest corner across the center thereof, meandered on the East along the right hand chute of Little River, and on the West by the sunk lands. The said survey showed sixty-six and 10/100 (66.10) acres in the northwest fractional quarter of section thirty

(30); and said survey showed seven and 80/100 (7.80) acres in the southwest fractional quarter of said section thirty (30). All of which details more fully appear from the field notes and plats referred to above.

(8.) On June 12, 1871, the State of Arkansas, by its governor, in pursuance of authority vested in him by certain acts of the General Assembly of the State of Arkansas, did make, execute and deliver to Moses S. Beach certain patents or deeds of conveyance, conveying to said Moses S. Beach the following described lands, situate in said township aforesaid, to-wit: The southwest fraction of section 14; all of section 18; all of section 19; all of section 20; the west half of section 21; all of section 29; the west half of the east half of section 28; all of section 30, in township 12 North, range 7 East of the Fifth Principal Meridian, containing 1664.14/100 acres; also all of fractional section 2; the northeast quarter
38 of fractional section 4; all of fractional section 3; all of fractional section 35; all of fractional section 36; in township 12 North of the base line, in range 6 East of the fifth Principal Meridian, containing 1401.8/100 acres The said patents aforesaid are duly recorded in Poinsett county, Arkansas, and the same now appears in Book "H" of the record of deeds at page 310 to 315 in the office of the Recorder of said county. Copies thereof are hereto attached, marked Exhibits "G" and "H," and made a part of this complaint.

(9.) Afterwards the said Moses S. Beach died intestate, leaving surviving him his widow, Chloe B. Beach, and William B. Beach, Charles Y. Beach, Emma B. Thayer, Ella Beach and Violet Beach, his only children and sole heirs at law. On November 18, 1892, the said Chloe B. Beach, being still a widow as aforesaid, Charles Y. Beach, a single man, Emma B. Thayer and Abbott H. Thayer, her husband, William B. Beach and Mabel K. Beach, his wife, Ella Beach and Violet Beach, unmarried women, did make, acknowledge, execute and deliver to William B. Beach their deed of conveyance, by its terms conveying to him all the lands described in the said patents to Moses S. Beach, with warranty of title and relinquishment of dower. The said deed was duly recorded in Poinsett County, Arkansas, and the same now appears of record in Book "H" of Deeds at page 445 in the office of the recorder of said Poinsett County, Arkansas. In this deed the said several tracts of land were described in all respects as they are described in the patents aforesaid. A copy of this deed is hereto attached, marked Exhibit "I" and made a part hereof.

(10.) On February 1, 1899, the said William B. Beach and Mabel K. Beach, his wife, did make, execute, acknowledge and deliver to the plaintiffs, the Chapman and Dewey Land Company, their deed of conveyance, with warranty of title and relinquishment of dower, by its terms conveying to said company all the lands described in the said patents, and this deed also described the several tracts of land
as the same are described in the said patents to Moses S.
39 Beach. This deed was duly recorded in Poinsett County, Arkansas, and now appears in Deed Record Book "M" at

pages 89-92 in the Recorder's Office of said county. A copy of said deed is attached hereto marked Exhibit "J" and asked to be made a part hereof.

By the same chain of conveyances, plaintiff claims title to all of section thirty-six (36), township thirteen (13) North, range six (6) east. Copy of Patent filed as Exhibit "H" 1 copy of deed from Beach to plaintiff filed as Exhibit "J."

In the year 1883, a decree was rendered in the Circuit Court of Poinsett County in pursuance of an Act of the General Assembly of the State of Arkansas, passed at its session of 1881, and known as the "Overdue Tax Act," declaring a lien for back taxes on all of sections six (6), and all of section seven (7) in township twelve (12) North, Range 7 East; and ordering the same to be sold unless redeemed within the period therein prescribed. Said land was not redeemed and the same was sold as provided by law and bought by the Arkansas Land Company, a corporation.. Afterwards upon petition of the Arkansas Land Company the title to said lands was confirmed in it by decree of the Chancery Court of Poinsett County, Arkansas, under the Statutes of the State of Arkansas providing for the confirmation of titles. Afterwards said Arkansas Land Company by deed recorded in said Poinsett County in Book "O" page 111 conveyed said section seven (7) to plaintiff. Afterwards the said Arkansas Land Company by its deed of conveyance duly recorded in Poinsett County, Arkansas, in Book J page 151 conveyed said section six (6) to Robert Law, whose heirs thereafter conveyed the same to plaintiff by deed recorded in said Poinsett County in Book O page 112. That by virtue of said conveyance and other conveyances decrees of court plaintiff became and is the owner in fee simple of said sections six (6) and seven (7). Copies of the deeds of conveyance and decrees of the chancery court of Poinsett County under which plaintiff claims title to the said sections
40 of land as aforesaid are filed herewith marked Exhibit K, L, M, N, O, P, Q & R.

(11.) The surveys made as aforesaid under the direction and authority of the United States Government, and the plat and field notes thereof now on file and of record in the General Land Office of the United States and in the office of the State Land Commissioner of Arkansas, show all of said surveyed lands and the legal subdivisions thereof to have been bounded by a body of water which was designated upon said official plats and in said field notes as the "Sunk Lands" "St. Francis River "Sunk Lands" and the "Hatchie Coon Sunk Lands" and "Cut off Lake" and said lands and the legal subdivisions thereof were in said surveys meandered upon said body of water.

Afterwards by process of accretion in some instances and relicition in others, the line of said tracts of land which border on the water was gradually extended, and the said tracts of land and each of them were gradually built up by the imperceptible increase thereof, caused by the deposit of earth, sand and sediment thereon by the contiguous water, so that the land now extends a considerable distance further toward the main channel of the river, and there is

now outside of and beyond the original lines of said survey, as above set out, and east of the main channel of the St. Francis River a considerable body of land adjacent to each of the tracts hereinbefore mentioned, and forming a part thereof, and accruing to the plaintiff by reason of the accretion and reliction aforesaid, and by the nature of the conveyances above set out. On the southern end of Hatchie Coon Island in section four (4) in township twelve (12) North range six (6) East, there is now about 320 acres of land; section three (3) is entirely full, with the exception of two or three acres, and there are in section two (2) about 320 acres of land.

Also by the accretion and reliction aforesaid the southern part of the island has been built up and extended over what would be sections 9, 10, 11 and 15, if the lines of the original survey were extended; so that there is now in the east half of section 9
41 about 160 acres of land, and in section 10 about 600 acres of land, and in section 15 about 200 acres of land; and in section 11 about 10 acres. In section 1 there are about 320 acres of land; in section 12 about 600 acres; and in section 13 about 500 acres. Outside of and immediately against the land so made to the originally surveyed tracts, there is a strip of land about 600 feet wide extending along the boundary of all the tracts hereinbefore described, the said land being overflowed when the water is at its highest stage during the wet season of the year, but dry most of the year. This strip of land is covered with cypress and gum trees in size one foot in diameter and under. Extending beyond this strip, about 1700 feet further in front of each of the tracts of land aforesaid is a strip of ground wholly covered by water during the greater part of the year, filled with flag, coarse grass and willows, the outer edge thereof being on the main channel of the St. Francis River. In the dry season of the year the water stands on this strip of ground in pockets or holes. The main channel of the St. Francis River runs on the western side of Hatchie Coon Island. On the eastern side thereof is a slough, coming out of the St. Francis River above Hatchie Coon Island and running into the river again below the island. This slough is from a half a mile to one mile wide; there is very little current in it, there being two or three small runs therein through which a skiff large enough to hold two men can be pushed with difficulty. The slough is unnavigable, and is covered with a growth of small cypress and gum timber, flag, willow and coarse grass.

Immediately south of Hatchie Coon Island the Sunk Lands acquire a very great width, being in some places as much as six miles wide from east to west, and forming a body of land and water commonly called "The Scatters." The main channel of the St. Francis River does not go further east than the eastern boundary of section sixteen (16), but turns from there south and west. There is no current outside of the river in the Scatters, except a small run or two, the most of it being still water covered with flag, willow,
42 coarse grass and scrubby timber.

(12.) In the year 1900, one James Anthony, a surveyor then in the employ of the Board of Directors of the St. Francis Levee

District under grant from whom defendants claim the unsurveyed lands herein referred to and belonging to plaintiff, undertook to survey the lands within the territory above described, which lay outside of and beyond the lines run by the government surveyor as aforesaid; and he made field notes and plats of his said survey, and filed them in the office of the clerk and recorder of Poinsett County, Arkansas. Copies whereof are herewith filed, marked Exhibits "K," "L" and "M," and asked to be made a part of this complaint. The location of the main channel of the St. Francis River is definitely shown in this survey.

(13.) On the 11th day of October 1900, and on the 11th day of January, 1901, the Board of Directors of St. Francis Levee District, a corporation created by the laws of the State of Arkansas, by its president, John B. Driver, and its secretary, Hugh R. McVeigh, did make, execute, acknowledge and deliver to C. H. Bodkin certain deeds of conveyance with warranty of title, attempting to convey to the said C. H. Bodkin lands which are described in the said deeds as follows: All section 1; all section 10; all section 11; all section 12; all section 13; all section 14; all section 23; all section 24; all section 26; all section 34; all fractional section 9; all fractional section 15; all fractional section 22; all fractional section 25; all fractional section 27; all fractional section 28; all fractional section 33; all fractional section 35; all fractional section 36; all fractional section 2 lying south and east of meandered line as per original U. S. Survey as shown in plats of date August 8-1849, 417.49 acres; all in township 12 North of the base line, in range 6 East of the fifth Principal Meridian, and situated in Poinsett County, Arkansas. Said deed
43 further attempts to convey lands described as follows: All of fractional section 3, township 12 North range 6 East lying south of meandered line as per original U. S. survey as shown by plats of date August 8, 1849, 167.47 acres. All fractional section 4, township 12 north range 6 east lying west and south of meandered line as per original U. S. survey as shown by plats of date August 8, 1849, 249.99. All fractional section 18, township 12 north range 7 east lying "east"? of meandered line as per original U. S. survey as shown by plats of date October 27th, 1845, 503.03 acres. All fractional section 19, township 12 north range 7 east lying west of meandered line as per original U. S. survey as shown by plats of date October 27th, 1845, 230.12 acres. And containing in all Eleven thousand five hundred and forty-two and 96/100 acres more or less. In said deed of January 11, 1901, is the following clause "above lands being more properly described in the Anthony survey of September and October 1900, recorded in Plat Book "B" pages 1, 2 & 3, with field notes for same in Plat Book "B" pages 5 and 6. The said deed of October 11, 1900, was duly recorded in Poinsett County, Arkansas, and now appears in Deed Record Book "O" at pages 219 to 221, and said deed of January 11, 1901, was recorded in said Poinsett County, and now appears of record in Book O at pages 367 to 370 in the Recorder's Office of said County. A copy of said deeds are hereto attached as Exhibits "O" & "P" and asked to be made a part hereof. By deed dated January 12, 1901, said C. H.

Bodkin and wife conveyed said lands by same description to Henry C. Williamson. Said deed is recorded in Poinsett County, Arkansas, in Deed Record O at pages 442 to 446. That by deed dated January 24, 1901, said H. C. Williamson and wife conveyed said lands by same description to defendants, Charles H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn as tenants in common. Said deed is recorded in Poinsett County, Arkansas, in Deed Record O at page 446.

That by virtue of the patents and conveyances and U. S. Government surveys, plats and field notes hereinbefore referred to by virtue of the riparian rights belonging to Plaintiff and by reason of
44 the premises, plaintiff is the owner in fee of all the lands described in deeds from said Board of Directors of St. Francis Levee District to said Bodkin, and in the subsequent conveyance made by said Bodkin and wife to said Henry C. Williamson, and by said Henry C. Williamson and wife to defendants.

That said conveyances from the said Board of Directors of St. Francis Levee District to said Bodkin, and from said Bodkin and wife to said Henry C. Williamson, and from said Henry C. Williamson and wife to defendants constitute a cloud on the title of plaintiff to the lands in said deed to Bodkin described, hostile and adverse to plaintiff.

That under pretense that title was in said Board of Directors of St. Francis Levee District, and is now in defendants as its grantees of said lands; defendants have attempted, and are attempting to exercise acts of ownership over said lands, and said defendants Charles H. and N. P. Biglow have conspicuously posted on said lands the following notice:

"Notice.

All persons found cutting timber or trespassing upon Township 12 North Range 6 East of the 5th Principal Meridian and lying East of St. Francis River, will be prosecuted to the full extent of the law.

BIGLOW BROS."

That defendants claim an estate in the premises hereinbfeore described adverse to plaintiff; that such claim is wholly unfounded and invalid in law or equity; and that its assertion by defendants depreciates the value of plaintiff's title and property and prevents it from using or selling the said property, and otherwise harasses and annoys it in its possession and ownership.

That the damages to plaintiff by reason of above adverse claims are irreparable, and that plaintiff has no adequate remedy at law.

(14.) The value of the lands described above owned by plaintiff and on the title to which said deeds from the Board of Di-
45 rectors of St. Francis Levee District and its grantees to defendants constitute a cloud, is at least five thousand dollars ($5,000.00). The said deeds under which the defendants claim have been spread of record in the office of the Recorder of Deeds

of Poinsett County, Arkansas. All the lands described in this complaint are wild, unimproved and unoccupied.

Wherefore plaintiff prays this Honorable Court to render a decree declaring the claims of defendants and those claiming by, through them or either of them by virtue of the said deed from said Board of Directors to said Bodkin, and from said Bodkin and wife to Henry C. Williamson, and from said Henry C. Williamson and wife to defendants to be invalid, void and of no force and effect, and that the title of plaintiff be declared valid in fee simple to all the unsurveyed lands in Township 12 North Range 6 East, as shown on the U. S. Government Survey Plat made of said Township and hereinbefore referred to lying east of the east bank of the main channel of the St. Francis River, as marked and designated on the Plat of the Anthony Survey recorded in Poinsett County, Arkansas, in Plat Book "B" at pages 1, 2 & 3 with Field Notes for same recorded in Plat Book "B" at pages 5 & 6, and also to all of Section 18 & 19 in Township Twelve (12) Range seven (7) East, west of meander lines, as shown on the U. S. Government Survey and Plat hereinbefore referred to, and for all other proper relief.

FRIERSON AND FRIERSON &
ASHLEY, GILBERT & DUNN,
Solicitors for Plaintiff.

46 STATE OF MISSOURI, *County of Jackson, ss:*

I, William H. Chapman, do*th* hereby make solemn oath that I am President of the Chapman & Dewey Land Company, a corporation, and I verily believe that the facts set forth in the foregoing complaint are true.

WILLIAM H. CHAPMAN.

Subscribed and sworn to before me this 26th day of January, 1903. My Commission expires August 23rd, 1904.

JESSIE R. COMSTOCK,
[SEAL.] *Notary Public in and for*
Jackson County, Missouri.

STATE OF ARKANSAS, *County of Poinsett:*

C. D. Frierson being sworn states on oath that he is Attorney for Chapman & Dewey Land Company, Plaintiff in this action which is a non-resident corporation and the officers of which are absent from and non-residents of Poinsett County, Arkansas, and that the defendants Charles N. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn are non-residents of the State of Arkansas.

[SEAL.] C. D. FRIERSON.

Subscribed and sworn to before me this January 29", 1903.

B. F. COLE, *Clerk.*

I hereby appoint R. L. Cowan Attorney *ad litem* for the non-residents defendants in this cause.
This January 29″ 1903.

B. F. COLE, *Clerk.*

I hereby accept the above appointment as Attorney *ad litem* for said non-resident defendants.
January 29″ 1903.

R. L. COWAN.

47 (Endorsed on back:) 315 Chapman & Dewey Land Company Plaintiff, *vs.* Charles H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn, Defendants. Complaint in Equity. Filed in my office January 29th, 1903. B. F. Cole, Clerk. By W. W. Nelms, D. C.

48 HARRISBURG, ARK., ——, 190–.

To the Modern News, Dr.

To Printer's Fee on annexed ..... $——
To affidavit ..... ——

Warning Order.

Poinsett Chancery Court.

CHAPMAN & DEWEY LAND CO., Plaintiff,
vs.
CHARLES H. BIGLOW, N. P. BIGLOW, L. T. WALKER & F. H. HARTSHORN, Defendants.

The defendants, Charles H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn, are warned to appear in this Court within thirty days, and answer the complaint of the plaintiff, Chapman & Dewey Land Company.
Jan. 29, 1903.

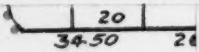
B. F. COLE, *Clerk,*
By W. W. NELMS, *D. C.*

STATE OF ARKANSAS, *County of Poinsett:*

I, L. D. Freeman, do solemnly swear that I am the Publisher of the Modern News, that it is a weekly newspaper published in the town of Harrisburg, County and State aforesaid, having a *bona fide* circulation therein, and that the annexed article was published in said paper successively for 4 weeks, the first insertion being on the 30 day of Jan. 1903, and the last insertion being on the 20 day of Feb. 1903, so help me God.

L. D. FREEMAN, *Publisher.*

t of the 5th Prn



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Sworn to and subscribed before me, this 5" day of Sept. 1903.

B. F. COLE, *Clerk.*

(Endorsed on Back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

49 At this page in the transcript it was intended to place the certified copy of United States plat of township 12 north, range 6 east. But owing to its size it is sent up unattached to the transcript. It is marked page 18.

(Here follows diagram marked p. 49*a*.)

50 At this page it was intended to insert certified copy of United States plat of township 12 north, range 7 east, but owing to its size the plat is sent up unattached. It is marked page 19.

(Here follows diagram marked p. 50*a*.)

Range 7 East of

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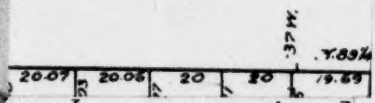

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51 *Patent to State of Arkansas*

No. 2.

The United States of America to all whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28th, 1850 entitled, "An Act to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits," it is provided that all the "Swamp and Overflowed Lands" made unfit thereby for cultivation within the State of Arkansas which remain unsold at the passage of said act, shall be granted to said State; And whereas in pursuance of instructions from the General Land Office of the United States, the Several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands" enuring to the Said State, under the Act aforesaid being situated in the District of Lands subject to sale at Batesville, Arkansas, to-wit:

Township 12 North, Range 6 East.

The whole of fractional Township, containing seven thousand two hundred and thirty six acres, and seventy eight hundredths of an acre according to the Official Plats of Survey of the said land returned to the General Land Office, by the Surveyor General,

And for which the Governor of the said State of Arkansas did on the Twentieth day of October one thousand eight hundred and fifty three, request a patent to be issued to the said State as required in the aforesaid act.

Now therefore know ye, that the United States of America, in consideration of the premises, and in conformity with the Act of Congress aforesaid, have Given and Granted, and by these presents do Give and Grant, unto the said State of Arkansas, in fee simple subject to the disposal of the Legislature thereof the tracts of Land above described.

To Have and to Hold the same, together with all the rights privileges, immunities and appurtenances thereto belonging,
52 unto the said State of Arkansas, in fee simple and to its assigns forever.

In testimony whereof, I Franklin Pierce President of the United States of America, have caused these Letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty ninth day of July in the year of our Lord one thousand eight hundred and fifty six, and of the Independence of the United States the eighty first.

By the President:

FRANKLIN PIERCE,
By H. E. BALDWIN,
Ass't Secretary.

JOS. S. WILSON,
Act'g Recorder of the General Land Office ad interim.

Recorded Vol. 1 Pages 76 to 90 inclusive.

State of Arkansas, Office of Commissioner of State Lands

LITTLE ROCK, ARK., *August 29th*, 1903.

I, F. E. Conway Commissioner of State Lands for the State of Arkansas do hereby certify that the annexed and foregoing transcript of a portion of Patent No. 2 Batesville series, is a true and correct copy of said instrument on file in this office in so far as relates to the land above described.

In testimony whereof I have hereunto set my hand and official seal this 29th day of August 1903.

[SEAL.]

F. E. CONWAY,
Commissioner of State Lands,
By C. B. MYERS,
Deputy Commissioner.

53 [Endorsed:] Deed. Filed for Record May 5" 1899. R. H. West, Clerk & Recorder. Filed for Record this 18" day of May, 1899. R. H. West, Clerk & Recorder By A. T. Gibson, D. C. Filed Sept. 11" 1903. B. F. Cole, Clerk.

54 No. 5.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved September 28th, 1850, entitled "An Act to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits," it is provided, that all the "Swamp and Overflowed Lands," made unfit thereby for cultivation within the State of Arkansas, which remained unsold at the passage of said Act, shall be granted to said State: And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and Overflowed Lands" enuring to the said State, under the Act aforesaid, being situated in the District of Lands subject to sale at Helena, Arkansas, to-wit:

Township 12 North, Range 7 East.

The whole of the Township except section Sixteen; containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre, according to the Official Plats of Survey of the said Lands returned to the General Land Office by the Surveyor General.

And for which the Governor of the said State of Arkansas, did on the twentieth day of June one thousand eight hundred and fifty-three, request a patent to be issued to the said State as required in the aforesaid Act. Now therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with the Act of Congress aforesaid, have Given and Granted, and by these presents do Give and Grant, unto the said State of Arkansas,

in fee simple, subject to the disposal of the Legislature thereof, the tracts of land above described.

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances thereto belonging, unto the said State of Arkansas, in fee simple, and to its assigns for-
55 ever.

In testimony whereof, I James Buchanan, President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-seventh day of September in the year of our Lord the one thousand eight hundred and fifty eight and of the Independence of the United States the eighty third.

By the President:

JAMES BUCHANAN,
By —— ——, *Secretary.*

JOS. S. WILSON,
Acting Recorder of the General Land Office, ad int.

Recorded Vol. 1, Pages 426 to 441 inclusive.

State of Arkansas, Office of Commissioner of State Lands.

LITTLE ROCK, ARK., *August 29th,* 1903.

I, F. E. Conway, Commissioner of State Lands for the State of Arkansas do hereby certify that the annexed and foregoing transcript of a portion of Patent No. 5 Helena series, is a true and correct copy of said instrument on file in this office in so far as relates to the land above described.

In testimony whereof I have hereunto set my hand and official seal this 29th day of August 1903.

[SEAL.]

F. E. CONWAY,
Commissioner of State Lands,
By C. B. MYERS,
Deputy Commissioner.

(Endorsed on back:) "B" 1. Filed Sept. 11" 1903. B. F. Cole, Clerk.

56 *Field Notes.*

Field Notes Sections 2, 35, & 36, Township 12 North, Range 6 East.

North between sections 35 & 36
2 23 Elm 20 ins dia
40 00 Set ¼ section post from which a
Cypress 11 ins dia brs N 3 W 44½ lks and a
Cypress 10 ins dia brs S 64½ E 18 lks
41 50 Entered cane
47 00 Left the cane
56 55 Ash 7 ins dia

62 00 To Cut Off Lake, Where
Set post corner to frl sections 35 & 36 from which a
Cypress 10 ins dia brs S 21½ W 12½ lks and a
Cypress 8 ins dia brs S 40 E 12 lks

Commenced at the corner to frl sections 35 & 36 on the South side of Cut Off lake and meander along said lake through section 35 T 12 N R 6 E.

W		10	00	Chs
S 75	W	8	00	"
S 54½	W	15	00	"
S 23½	W	13	00	"
S 30½	W	8	50	"
S 10	W	9	00	"
S 8½	E	21	00	"
S 55	E	3	86	" to the corner

sections 2 & 35 Tps 11 & 12 N R 6 E.

Commence at the corner to frl sections 35 & 36 on the South side of Cut Off Lake and meander along said lake through section 36 T 12 N R 6 E.

57

N 45	E	9	00	Chs
S 87½	E	8	00	"
N 44	E	12	00	"
S 48	E	19	00	"
S 12½	W	4	00	"
S 28½	E	10	00	" to the right hand of Little River,

thence down said chute.

S 17½	W	12	00	Chs
S 2½	W	15	00	"
S 18½	W	17	00	"
S 2	E	4	00	"
S 45	W	5	00	"
S 62	W	2	06	" to the corner to frl sections 1 &

36 Tps 11 & 12 N R 6 E

Commence at the corner to frl sections 1 & 36 on the East side of the Chute and meander up said chute through section 36.

N 29	W	10	00	Chs
N 61	E	10	00	"
N 3	W	12	00	"
N 4	E	12	50	"
N 16½	E	8	00	"
N 24	E	5	00	"
N 28	E	7	00	"
N 52½	E	20	00	"
E		10	00	"
S 61½	E	2	21	" to the corner to frl sections 31 &

36 T 12 N R 6 E & 7 E.

South between sections 2 & 3

7 88 Cottonwood 28 ins dia

40 00 Set ¼ section post from which a
Cypress 4 ins dia brs N 74 E 15½ lks and a
Willow 10 ins dia brs S 51½ 12 lks

58

60 94 Willow 20 ins dia
66 00 To Sunk Lands, Where
Set post corner to frl sections 2 & 3 from which a
Birch 7 ins dia brs N 72½ W 7½ lks and a
Maple 9 ins dia brs N 21 E 24 lks

Commence at the corner to frl sections 2 & 3 on the Sunk Land and meander up through section 2 T 12 N R 6 E

N 73½ E 10 00 Chs
N 31½ E 5 00 "
N 12 00 "
N 43 E 16 00 "
N 62 E 25 00 "
N 53 E 12 50 "
N 64 E 20 00 "
N 6½ W 3 '6 " to the corner of
frl sections 35 T 13 N R 6 E., 32.56 Chs East of the ¼ section corner on said line, Where
Set post corner to frl sections 2 T 12 N R 6 E from which a Tupelo Gum 11 ins dia brs N 69 W 19½ lks and a Tupelo Gum 9 ins dia brs S 6½ W 12 lks
Set post corner to sections 1 6 31 & 36 and *to*
Tps 11 & 12 N Rgs 6 & 7 E from which a-
Ash 10 ins dia brs N 17 E 15½ lks and a
Willow 12 ins dia brs S 51 W 40½ lks
Willow 10 ins dia brs N 40½ W 33 lks and a-
Ash 10 ins dia brs 46½ E 28½ lks
North along the East side of section 36 T 12 N R 6 E
7 31 Gum 16 ins dia
35 85 Gum 18 ins dia
40 00 Set ¼ section post from which a-
Overcup Oak 7 ins dia brs S 34 E 11 lks and a-

59

Overcup Oak 6 ins dia brs N 37½ W 3 lks
47 64 Cow Oak 10 ins dia
67 00 Intersected the Sunk Lands on the left bank of the right hand chute of Little River, Where
Set post corner to frl sections 36 & 31 T 12 N Rgs 6 & 7 E
Willow 12 ins dia brs S 9 E 27 lks and a
Cypress 6 ins dia brs S 36½ W 8 lks
80 00 The river here is dispersed on many directions through the Sunk Lands without any particular channel and
No corner set.
West along the South side of section 36 T 12 N R 6 E
7 07 Sweet Gum 12 ins dia
40 00 Set ¼ section post on the left bank of the right hand chute of Little River from which a

Cypress 9 ins dia brs N 60½ E 50½ lks and a-
Ash 9 ins dia brs S 40 E 59½ lks

54 00 West side of the right hand chute of Little River, Where
Set post corner to frl sections 1 & 36 Tps 11 & 12 N R 6 E
Cypress 11 ins dia brs N 87½ W 32 lks and a
Cypress 10 ins dia brs S 63 W 36 lks

59 77 Ash 18 ins dia

60 50 Entered cane

80 00 Set post corner to sections 35 & 36 from which a
Sweet Gum 14 ins dia brs N 38 E 34½ lks and a-
Ash 8 ins dia brs N 68 W 33½ lks
West along the South side of section 35 T 12 N R 6 E

4 89 Willow 20 ins dia

13 50 Left the cane

34 50 To a large Lake, Where
Set post corner to frl sections 2 & 35 Tps 11 & 12 N R 6 E

60 Willow 20 ins dia brs S 79 E 33 lks and a-
Ash 15 ins dia brs N 8½ E 29½ lks
Set post corner to sections 35 & 36 T 13 N R 6 E from which a Tupelo Gum 30 ins dia brs N 36 W 45 lks and a
Tupelo Gum 9 ins dia brs N 35 E 66 lks
West along the South Side of section 35 T 13 N R 6 E

1 63 Cypress 40 ins dia

7 50 To Corner on Sunk Lands, viz,
Tupelo Gum 11 ins dia brs N 69 W 19½ lks and a
Tupelo Gum 9 ins dia brs S 6½ W 12 lks

40 05 Set ¼ section post from which a-
Ash 8 ins dia brs N 7 W 17 lks and a
Cottonwood 7 ins dia brs S 36 W 15 lks

80 10 Set post corner to sections 34 & 35 from which a
Sweet Gum 28 ins dia brs N 56 W 38 lks and a
Sweet Gum 30 ins dia brs N 25 E 21 lks

Survey of 1846 & 47 Var 7d 47 min E.

61

Field Notes Sections 7, 18, & 19, Township 12 North, Range 7 East.

Set post corner to frl sections 19 & 30 from which a
Willow 8 ins dia brs S 85 W 27 lks and a
Willow 7 ins dia brs N 32½ W 13 lks
West between sections 19 & 30

10 00 Willow 8 ins dia

27 50 Intersected the Range line, 35 lks
South of the corner to sections 24 & 25 T 12 N R 6 E. Where
Set post corner to frl sections 19 & 30 from which a
Willow 8 ins dia brs S 15 E 54 lks and a
Cypress 6 ins dia brs N 75 E 41½ lks

Commenced at the corner to frl sections 19 & 30 on the West side of Sunk Lands and meander along the west side of sunk lands in section 19 T 12 N R 7 E

N 38 E 33 00 Chs
N 43¼ E 10 00 "
N 47 E 20 00 "
N 42 E 14 00 "
N ¼ E 11 18 " to the corner to frl sections 19 & 20
North between sections 19 & 20

68 66 To the North side of Sunk lands, Where
Set post corner to frl sections 19 & 20 from which a
Willow 7 ins dia brs N 18¼ W 17 lks and a
Willow 6 ins dia brs N 12½ E 16 lks

80 00 Set post corner to sections 17 18 19 & 20 from which a
Willow 6 ins dia brs N 71 E 5½ lks and a
Cypress 8 ins dia brs S 52½ W 9 lks
West between sections 18 & 19

28 08 Intersected large body of Sunk lands, 35 lks
South of witness corner on the East side of Sunk lanks where

62 Set post corner to frl sections 18 & 19 from which a
Willow 10 ins dia brs S 60 E 15 lks and a
Willow 8 ins dia brs N 75 E 20 lks
North between sections 17 & 18

18 85 Willow 10 ins dia

40 00 Set ¼ section post from which a
Cypress 10 ins dia brs N 5½ E 33½ lks and a
Cypress 8 ins dia brs S 30½ W 29 lks

49 50 Intersected open lake

55 00 to the other side of lake

60 18 Cow oak 12 ins dia

79 00 Intersected west arm of Lake

80 00 Set post corner to sections 7 18 17 & 8 from which a
Cypress 10 ins dia brs S 1½ E 91 lks and a
Cypress 10 ins dia brs S 61 W 71½ lks
West between sections 7 & 18

15 00 Willow 10 ins dia

30 50 Intersected the sunk lands, 40 lks
South of the Witness Corner, Where
Set post corner to frl sections 7 & 18 from which a
Willow 10 ins dia brs S 17½ E 66 lks and a
Willow 12 ins dia brs N 31 E 50 lks
North between sections 7 & 8

26 83 Willow 6 ins dia

40 00 Set ¼ section post from which a
Willow 12 ins dia brs S 10 E 24 lks and a
Willow 10 ins dia brs N 82 E 14½ lks

49 00 Cottonwood 12 ins dia

80 00 Set post corner to sections 5 6 7 & 8 from which a
Maple 15 ins dia brs N 48 E 8 lks
Maple 12 ins dia brs S 88½ W 28½ lks
West between sections 6 & 7

63

23 50 Willow 7 ins dia
35 00 Intersected the Sunk Lands, 33 lks
South of the Witness corner, Where
Set post corner to frl sections 6 & 7 from which a
Willow 10 ins dia brs S 63 E 30 lks and a
Willow 8 ins dia brs N 50 E 25 lks

Commence at the corner to frl sections 24 & 19 T 12 N R 6 & 7 E on the East side of Sunk Lands and meander along Sunk land through section 19 T 12 N R 7 E.

N 48 E 34 00 Chs
N 39 E 40 00 "
N 10 55 " to the corner to
frl sections 18 & 19.

Thence up through section 18.

N 6 W 8 00 Chs
N 74 E 16 00 "
N 40 00 "
N 16¼ W 19 00 "
N 43½ W 12 00 "
N 71 W 2 55 " to the corner to frl
secs 7 & 18 T 12 N R 7 E.

Thence up through section 7.

N 13¼ W 20 00 Chs
N 25 00 "
N 8 E 15 00 "
N 3¼ E 18 00 "
N 49 W 4 30 " to the corner to frl
sections 6 & 7 T 12 N R 7 E.

Set post corner to sections 24 & 25 T 12 N R 6 E from which a Willow 10 ins dia brs N 37½ W 95 lks and a
Willow 6 ins dia brs N 83 W 17 lks
North along the East side of section 24 T 12 N R 6 E

64

15 50 Intersected the large body of Sunk Lands, Where
Set post corner to frl sections 24 T 12 N R 6 E and
Section 19 T 12 N R 7 E from which a
Cypress 8 ins dia brs S 89 W 13 lks and a
Cypress 6 ins dia brs S 62 E 27 lks

Survey of 1841 Var 8 d E.

OFFICE OF COMMISSIONER OF STATE LANDS.

I, J. W. Colquitt, Commissioner of State Lands in and for the State of Arkansas, do hereby certify that the above and foregoing six pages of typewritten matter contain a true and correct copy of the field notes as set out in the captions now on file in this office.

In testimony whereof, I have hereunto set my hand and affixed

the seal of my office. Done this the 9th day of August 1901, at the City of Little Rock, Arkansas.

J. W. COLQUITT,
Commissioner of State Lands.

(Endorsed on back:) "C" 2 Filed Sept. 11" 1903. B. F. Cole, clerk.

65 Field Notes for Secs. 1, 2, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 34, 35, & 36.

Twp 12 N, R 7 E.

Survey 1840.

(Said Field Notes in so far as they relate to Section 30 Twp 12 N R 7 E. are as follows:

45 50 A Willow 12 ins dia
80 00 Set post cor to Secs 29 30 31 & 32 from which a Willow 12 ins dia brs N 88 W 36 lks a Willow 10 ins dia brs S 30 E 45 lks.
West on a true line bet Secs 30 & 31
4 17 A Cypress 14 ins dia
13 25 The E side of Sunk Lands, Set post cor to frl Secs. 30 & 31 from which a Cypress 10 ins dia brs S 70 E 16 lks a Willow 14 ins dia brs N 33 E 19 lks
North Bet Secs 29 & 30
32 46 A Willow 12 ins dia
33 50 Intersect left bank of the right hand Chute of Little River runs W where
Set post cor to Secs frl 29 & 30 from which a Willow 12 ins dia brs S 31½ E 24 lks No other tree convenient.
West on a true line bet Secs 19 & 30
10 00 A willow 8 ins dia
27 50 Intersect Range line 35 lks S of cor to Secs 24 & 25 T 12 N R 6 E where set post cor to Secs 19 & 30 T 12 N R 7 E from which A Willow 8 ins dia brs S 15 E 54 lks a Cypress 6 ins dia brs N 75 E 41½ lks
No cor set

66

North on East side of Sec 25 T 12 N R 6 E
22 86 To the right bank of the right hand Chute of Little River where set post Cor to frl Secs 25 T 12 N R 6 E & 30 T 12 N R 7 E from which a Cypress 10 ins dia brs N 12 W 9 lks a Cypress 9 ins " " N 66 E 22 "
3006 A Willow 10 ins dia

40 00 Set ¼ Sec cor post from which a Willow 6 ins dia brs N 75 E 15 lks a Cypress 6 " " " S 25 W 75 "
75 00 A Cypress 6 ins dia
80 00 Set post cor to Secs 24 & 25 from which A Willow 10 ins dia brs N 37½ W 95 lks A Willow 6 ins dia brs N 83 W 17 "

Commence at Cor to frl Secs 30 & 31 on the S Side of Sunk Lands left bank of the right hand chute of Little River & meander
Along said Sunk Lands in Sec 30.
N 18¾ E 30 00 Chs
N 35 E 6 20 " To the cor to frl Secs 29 & 30

Commence at the cor to frl Secs 30 & 35 Twps 12 N Rs 6 & 7 E on the right & N side of the right hand chute of Little River & meander
Along the right bank & N side of the Sunk Lands on said river in Sec 30
67 N 29 E 30 00 Chs
North 15 50 "
N 41¼ E 18 00 "
N 31 E 2 19 " where set post cor to frl Secs 19 & 30 from which a Willow 8 ins dia brs S 85 W 27 lks a Willow 6 ins dia brs N 32½ W 13 lks.

OFFICE OF COM. OF STATE LANDS,
LITTLE ROCK, ARK., *Jan'y* 25", 1902.

I hereby certify that the above & foregoing Field Notes for Sec. 1, 2, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 34, 35 & 36 T 12 N R 7 E. and Secs 1, 12, 13, 23, 23, 25, 26, 27, 28, 34, 35 & 36 Twp 13 N R 6 E are a true and correct copy of the Original Field Notes of the U. S. Survey of said Sections now on file in this office.

[SEAL.] J. W. COLQUITT,
Com. of State Lands.

(Endorsed on back:) " C 2 & D " Filed Sept. 11" 1903. B. F. Cole, Clerk.

68

Field Notes Sections 4 & 3, Township 12 North, Range 6 East.

South between sections 2 & 3 T 12 N R 6 E
7 88 Cottonwood 28 ins dia
40 00 Set ¼ section post from which a Cypress 4 ins dia brs N 74 E 15¾ lks and a Willow 10 ins dia brs S 51½ W 12 lks
60 94 Willow 20 ins dia
66 00 To the Sunk Lands, where Set post corner to frl section 2 & 3 from which a Birch 7 ins dia brs 72½ W 7¾ lks and a

Maple 9 ins dia brs N 21 E 24 lks
At the corner to sections 33 & 34 T. 13 N R 6 E
I take bearing trees in sections 3 & 4 T 12 N R 6 E., viz:
Willow 10 ins dia brs S 50 W 24 lks and a
Birch 9 ins dia brs S 24 E 23 lks
South between sections 3 & 4 T 12 S R 6 ⋕

3 17 Birch 10 ins dia
10 00 Left small cypress and Willow and entered Gum timber
17 00 Entered small cypress and willow water gradually deepening
26 50 To the St. Francis River sunk lands, Where
Set post corner to frl sections 3 & 4 from which a
Willow 9 ins dia brs N 26 W 10 lks and a
Tupelo Gum 8 ins dia brs N 33 E 6½ lks

Commenced at the corner to frl sections 2 & 3 on the St. Francis River sunk lands and meander through section 3 T 12 N R 6 E

S 71½ W 23 00 Chs
N 76 W 6 00 "
N 49½ W 27 00 "
N 68½ W 20 00 "
N 35½ W 19 00 "
69 N 13 W 6 00 Chs
N 16 W 3 40 " to the corner to frl sections 3 & 4 on the Sunk Lands.

Commenced at the corner to sections 3 & 4 on the St. Francis Sunk Lands and meander through section 4 T 12 N T 6 E

N 29½ W 3 00 Chs
N 55 W 11 00 "
N 68 W 10 00 "
N 40½ W 12 00 "
N 35 E 4 00 "
N 80 E 10 00 "
N 46 E 85 " to the corner to frl secs 4 & 33 Tps 12 & 13 N Rg 6 E.

Commenced at the corner to frl sections 2 & 3 on the Sunk Lands and meander through section 2. T 12 N R 6 E.

N 73½ E 10 00 Chs
N 31½ E 5 00 "
N 12 00 "
N 43 E 16 00 "
N 62 E 25 00 "
N 53 E 12 50 "
N 64 E 20 00 "
N 6½ W 3 86 " to the line on the South side of section 35 T 13 N R 6 E., 32 56 Chs East of the ¼ section corner on said line, Where

Set post corner to corner to frl section 2 T 12 N R 6 E from which Tupelo Gum 11 ins dia brs N 69½ W 19½ lks and a Tupelo Gum 9 ins dia brs S 6½ W 12 lks
Set post corner to sections 34 & 35 T 13 N R 6 E from which a Sweet Gum 28 ins dia brs N 56 W 38 lks and a Sweet Gum 30 ins dia brs N 25 E 21 lks

70

West along the South side of section 34 T 13 N R 6 E
10 83 Sweet Gum 14 ins dia
40 05 Set ¼ section post from which a
Birch 12 ins dia brs S 74 E 12 lks and a
Birch 14 ins dia brs N 3 W 31 lks
48 23 Willow 12 ins dia
80 10 Set post corner to sections 33 & 34 T 13 N R 6 E from which a
Willow 14 ins dia brs N 83 E 31 lks and a
Willow 9 ins dia brs N 3 W 28 lks
West along the South side of section 33 T 13 N R 6 E
15 00 Sunk Lands, Where
Set post corner to frl section 33 T 13 N R 6 E from which a
Cypress 10 ins dia brs N 51 E 23 lks and a
Cypress 10 ins dia brs S 5¼ E—marked B. T.

Survey of 1849 Variation 7½ d E.

Field Notes Section 6, Township 12 North, Range 7 East.

Set post corner to sections 5 6 7 & 8 from which a
Maple 15 ins dia brs N 48 E 8 lks and a
Maple 12 ins dia brs S 88½ W 28½ lks
North between sections 5 & 6 T 12 N R 7 E
31 48 Cypress 12 ins dia
40 00 Srt ¼ section post from which a
Cottonwood 18 ins dia brs S 75 W 21 lks and a
Gum 24 ins dia brs S 6 E 13 lks
65 43 Gum 30 ins dia
81 25 Intersected the South boundary of T 13 N R 7 E, 190 lks East of the corner to sections 31 & 32., Where
Set post corner to sections 5 & 6 T 12 N R 7 E from which a

71

Cottonwood 10 ins dia brs 27 W 26 lks and a
Cottonwood 12 ins dia brs S 19 E 31 lks
West between sections 6 & 7 T 12 N R 7 E
23 50 Willow 7 ins dia
35 00 Intersected the Sunk Lands, 33 lks South of the witness corner, Where
Set post corner to frl sections 6 & 7 from which a
Willow 10 ins dia brs S 63 E 30 lks and a
Willow 8 ins dia brs N 50 E 25 lks

Commenced at the corner to frl sections 6 & 7 on the East side of Sunk Lands on the left bank of the St. Francis River and meander along the East side of Sunk Lands in section 6.

N 45 W 14 00 Chs
N 15 00 "
N 58 E 18 00 "
N 25 00 "
N 28 E 20 00 "
N 62 W 4 00 " to the corner to frl sec 6 T 12 N R 7 E and section 31 T 13 N R 7 E

East along the South side of Section 31 T 15 N R 7 E

57 12 The East side of Sunk Lands
60 84 Willow 10 ins dia
80 00 Set post corner to sections 31 & 32 from which a Gum 30 ins dia brs N 55 E 28 lks and a Gum 36 ins dia brs N 57½ W 41½ lks

Survey of 1841 Variation 8 d E.

OFFICE OF COMMISSIONER OF STATE LANDS,
72 LITTLE ROCK, ARKANSAS.

I, J. W. Colquitt, Commissioner of State Lands in and for the State of Arkansas do hereby certify that the above and foregoing two pages and part of page contain a true and correct copy of the field notes for section- 3 & 4 Township 12 North Range 6 East and Section 6 Township 12 North Range 7 East now on file in this office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of my office. Done this the 8 day of March 1901 at Little Rock.

J. W. COLQUITT,
Commissioner of State Lands,
By C. B. MYERS,
Deputy Com'r.

(Endorsed on back:) "D" Filed Sept. 11" 1903. B. F. Cole, Clerk.

73 No. 1.

A list of Swamp and Overflowed Lands selected as enuring to the State of Arkansas, under the provisions of the Act of Congress, approved September 28th 1850, in the District of Lands subject to sale at Batesville, Arkansas, viz.

Swamp Land Selection.

Parts of sections.	Section.	Township.	Range.	Surveyed area. Acres.	Hdths.
Fr. Section.....	2	11 N.	6 E.	498	50
" "	3	"	"	58	72
" "	9	"	"	167	73
" "	10	"	"	10	59
" "	11	"	"	498	84
" "	14	"	"	437	59
" "	15	"	"	315	55
" "	22	"	"	566	45
N. W. fr. ¼.....	2	13 N.	6 E.	58	24
Fr. Section.....	1	"	"	...	77
Fr. Township.....	...	12 N.	6 E.	7236	78

General Land Office, July 22d. 1853.
Respectfully Submitted for approval.
(Signed) JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR, *July 28th*, 1853.

The selections embraced in the foregoing list are approved subject to any valid legal rights that may exist thereto.
(Signed) JAMES CAMP*B*,
Acting Secretary.

GENERAL LAND OFFICE, *October 5th*, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of List No. 1. of Swamp and Overflowed Lands, selected as inuring to the
74 State of Arkansas, under the provisions of the Act of Congress, approved September 28th 1850, in the District of Lands subject to sale at Batesville, Arkansas, taken from the original on file in this office, which was on the Twenty-eighth day of July 1853, approved by the Secretary of the Interior.

In witness whereof I have hereunto subscribed my name
[SEAL.] and caused to be affixed the seal of this office, at the city of Washington on the day and year above written.

JOHN WILSON,
Commissioner.

(Endorsed on back:) "A" Filed Sept. 11" 1903. B. F. Cole, Clerk.

75 Copy.

No. 1.

A list of Swamp and Overflowed Lands selected as enuring to the State of Arkansas, under the provisions of the Act of Congress approved September 28th 1850, in the District of Lands subject to sale at Helena, Arkansas, viz :

Parts of section.	Section.	Township.	Range.	Surveyed area. Acres. Hdths.	Unsurveyed area. Acres. Hdths.	Total area. Acres. Hdths.
All of Township.....	.....	12 N.	7 E.	(Ex. sec. 16)	....	13,815.67
Township.....	.....	12 N.	9 E.	(Except sec. 16)	....	14,565.03

General Land Office, May 6th 1853.
Respectfully submitted for approval.
(Signed) JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May 11th*, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Arkansas, under the Act of Congress app'd the 28th of September 1850, subject to any valid legal rights which may exist thereto.
(Signed) R. McCLELLAND, *Secretary.*

GENERAL LAND OFFICE, *May 28th*, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a true and correct copy of List No. 1 of Swamp and Overflowed Lands, in the District of Lands subject to sale at Helena, Arkansas, selected as enuring to the State of Arkansas, under the provisions of the Act of Congress, approved September 28th 1850, taken from the original on file in this
76 office, which was on the eleventh day of May one thousand eight hundred and fifty three, approved by the Secretary of the Interior.

In testimony whereof I have hereunto subscribed my
[SEAL.] name, and caused to be affixed the Seal of this office, at the City of Washington, the day and year above written.
JOHN WILSON,
Commissioner.

(Endorsed on back.)

"B."

Office of Commissioner of State Lands.

LITTLE ROCK, ARK., *Sept.* 26, 1900.

I, J. W. Colquitt, Commissioner of State Lands for the State of Arkansas, hereby certify that the annexed and foregoing copies of List No. 1, Batesville District, and List No. 1 Helena District of Swamp and Overflowed Lands, are true and correct copies of said

lists on file in this office, in so far as relates to the land above described.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal this 26th day of Sept., 1900.

J. W. COLQUITT,
Commissioner of State Lands.

(Endorsed on back:) "A & B." # 1. Filed Sept. 11", 1903. B. F. Cole, Clerk.

77 *Deed to Moses S. Beach.*

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that whereas by an act of Congress of the United States of America entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed land within their limits" approved 28" September, 1850, and whereas, under the provisions of the Acts of the General Assembly of the State of Arkansas regulating the price and sale of lands so granted, the Land Commissioner for the State of Arkansas, did grant his certificate dated the 1st day of June, 1871, and numbered 1200 to and in favor of Moses S. Beach, for the following described lands to-wit: The southwest fraction of section 14; all of section 18; all of section 19; all of section 20; the west half of section 21; all of section 29; west half of east half of section 28; all of section 30 in Township 12 north range 7 East of the 5th Principal Meridian, containing 1664.14 acres and the Commissioner of State Lands of the State of Arkansas, having by his certificate dated 12th day of June, 1871, certified that said land has been confirmed to the State of Arkansas by the United States, as a portion of the swamp and overflowed lands granted to said State by the Act of Congress approved 28" of September 1— and that the purchase money for said land amounting to $1248 *Dollars* and 10 cents has been fully paid; therefore the said Moses S. Beach is entitled to a deed from the State of Arkansas for said land, now therefore I, O. A. Hadley, Acting Governor of the State of Arkansas for and in behalf of said State and in consideration of the premises, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said Moses S. Beach, his heirs and assigns, the tracts of land hereinbefore designated and lying and being in Poinsett county in said State.

To have and to hold the said tracts or parcels of land here-
78 inbefore described, with the appurtenances and hereditaments to the said Moses S. Beach, his heirs and assigns forever.

In testimony whereof, I, O. A. Hadley, Acting Governor of the State of Arkansas, have hereunto set my hand and caused
[SEAL] the seal of said State to be affixed in the city of Little Rock on this 12th day of June 1871 and of the Independence of the United States of America the 95th year.

By the Governor.

O. A. HADLEY.

J. M. JOHNSON,
Secretary of State.

Filed for record June 15" 1892 and duly recorded June 15th, 1892.

A. A. COPPAGE, *Clerk*,
By L. C. GOING, *D. C.*

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, B. F. Cole, Clerk of the Circuit Court within and for the county and State aforesaid do hereby certify that the annexed and foregoing page contains a full, true and complete copy of the deed wherein the State of Arkansas appears as grantor and Moses S. Beach appears as grantee as the same appears of record in this office in Deed Record "H" page 315.

[SEAL.] Witness my hand and seal as such Clerk this 15th day of September 1903.

B. F. COLE, *Clerk.*

(Endorsed on back:) "G" Filed Sept. 11" 1903. B. F. Cole, Clerk.

79 *Deed for Swamp and Overflowed Lands.*

The State of Arkansas to all to whom these presents shall come, Greeting:

Know Ye, That Whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and other States to reclaim Swamp and Overflowed Lands within their limits," approved 28th September, 1850; and whereas, under the provisions of the Acts of the General Assembly of the State of Arkansas regulating the price and sale of the lands so granted, the Land Commissioner for the State of Arkansas did grant his certificate dated the first day of June, 1871, and numbered 1225, to and in favor of Moses S. Beach for the following described land, to wit:

All of fractional section 1; all of fractional section 12; all of fractional section 13; all of fractional section 24; all of fractional section 25; all of fractional section 36, in township 13 north, of the base line in range 6 east of the Fifth Principal Meridian, containing 548-09/100 acres.

And the Commissioner of State Lands of the State of Arkansas having by his certificate dated 12th day of June 1871, certified that said land has been confirmed by the United States to the State of Arkansas as a portion of the Swamp and Overflowed lands granted to said State by the Act of Congress approved 28th September, 1850, and that the purchase money for said land amounting to 411 Dollars and 7 cents has been fully paid, therefore the said Moses S. Beach is entitled to a deed from the State of Arkansas for said land.

Now therefore, I, O. A. Hadley, Acting Governor of the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to

the said Moses S. Beach, his heirs and assigns the tracts of
80 land hereinbefore designated, and lying and being in Craighead County in said State.

To have and to hold the said tracts or parcels of land hereinbefore described with the appurtenances and hereditaments to the said Moses S. Beach, his heirs and assigns forever.

In testimony whereof, I, O. A. Hadley, Acting Governor of the State of Arkansas, have hereunto set my hand and caused
[SEAL.] the seal of said State to be affixed in the City of Little Rock on this 12th day of June, 1871, and of the Independence of the United States of America the 95th year.

By the acting Governor:

O. A. HADLEY.

J. M. JOHNSON,
Secretary of State.

Filed for record Feb'y 6th, 1892.

C. M. ANDERSON, *Clerk.*
By R. H. WEST, *D. C.*

STATE OF ARKANSAS, *County of Craighead, ss:*

I, T. W. Altman, Clerk of the Circuit Court and *Ex-Officio* Recorder within and for the County aforesaid, do hereby certify that the foregoing is a true and correct copy of a deed from the State of Arkansas to Moses S. Beach as the same appears of record in my office in Deed Record Vol. 10 at page 561.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court on this 16th day of September,
[SEAL.] 1903.

T. W. ALTMAN, *Clerk.*
By JOHN R. WEST, *D. C.*

(Endorsed on Back) "H" 1. Filed Sept. 11", 1903. B. F. Cole, Clerk.

81 State of Arkansas to all to whom these presents shall come, Greeting:

Know Ye, That Whereas by an Act of Congress of the United States of America entitled An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits, approved 28th September 1850 and whereas under the provisions of the Acts of the General Assembly of the State of Arkansas regulating the price and sale of the lands so granted the Land Commissioner for the State of Arkansas did grant his certificate dated the 1st day of June 1871 and — 1223 to and in favor of Moses S. Beach for the following described land to wit: All of Fractional Section 2, The North East Quarter of Fractional Section 4, all of Fractional Section 3, all of Fractional Section 35, all of Fractional section 36, in Township 12 North of the base line in Range 6 East of the fifth Principal Meridian containing 1401 & 08 / 100 Acres and the Commissioner of State Lands of the State of Arkansas having

by his certificate dated the 12 day of June 1871 certified that said land has been confirmed by the United States to the State of Arkansas as a portion of the swamp and overflowed lands granted to said State by the Act of Congress approved 28th September 1850 and that the purchase money for said lands amounting to 1050 Dollars and 85 cents has been fully paid therefore the said Moses S. Beach is entitled to a deed from the State of Arkansas for said land. Now therefore I, O. A. Hadley acting Governor of the State of Arkansas for and in behalf of said State and in consideration of the premises have granted, bargained sold confirmed and conveyed and by these presents do grant bargain sell confirm and convey to the said Moses S. Beach his heirs and assigns the tracts of land hereinbefore designated and lying and being in Poinsett County in said State.

In testimony whereof I, O. A. Hadley acting Governor of the State of Arkansas have hereunto set my hand and caused
82 [SEAL.] the seal of said State to be affixed in the City of Little Rock on this 12th day of June 1871 and of the Independence of the United States of America the 95th year.

By the acting Governor.

O. A. HADLEY.

J. M. JOHNSON,
Secretary of State.

Filed for record June the 14th 1902 and duly recorded June the 15th 1903.

A. A. COPPAGE, *Clerk.*

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, B. F. Cole, Clerk of the Circuit Court for the county aforesaid do hereby certify that the above and foregoing is a true and complete copy of a deed wherein the State of Arkansas was Grantor and Moses S. Beach appears as grantee as the same appears in Record Book "H" on pages 310 & 311.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 17th day of September, A. D. 1903.

B. F. COLE, *Clerk,*
By W. W. NELMS, *D. C.*

(Endorsed on back:) "H" Filed Sept. 11" 1903. B. F. Cole, Clerk.

83 *Deed.*

Moses S. Beach
to
Wm. B. Beach.

This indenture made the 18th day of November in the year Eighteen Hundred and Ninety two between Chloe B. Beach widow of Moses S. Beach, and Charles Y. Beach, Emma B. Thayer and Abbot H. Thayer, her husband, William B. Beach and Mabel R.

Beach his wife, Ella Beach and Violet Beach being all of the heirs at law of Moses S. Beach deceased parties of the first part and William B. Beach party of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of One Dollar, lawful money of the United States paid by the said party of the second part do hereby grant bargain sell and convey unto the said party of the second part and his heirs and assigns forever all those certain lots pieces or parcels of land situated lying and being in Poinsett County in the State of Arkansas in township Eleven north range six east which are described as follows, to-wit: All fractional section one all fractional section two all fractional section three the south west quarter section nine and the northeast fractional quarter section ten, all fractional section eleven all fractional section twelve the north half of fractional section thirteen the north half of fractional section fourteen the north part of the south half of section fourteen the south part of the south west quarter of section fourteen all fractional section fifteen the southeast quarter of section seventeen the east half of the southwest quarter of section seventeen all of section nineteen the north half of the southwest quarter of section twenty the southeast quarter of section twenty all of section twenty one all of section twenty two the northwest quarter of section twenty three the west part of the south west quarter or section twenty three, all of section twenty seven all of section twenty eight all of section twenty nine all of section thirty all of section thirty one all of section thirty two all of section thirty three and also all those certain lots or pieces or parcels of land situate lying and being in Poinsett County in the
84 State of Arkansas, in Township Twelve North Range six east which are described as follows, to-wit: All fractional section two all section three the northeast quarter of section four all of section thirty five all of section thirty six and also all those certain lots, pieces or parcels of land situate lying and being in said Poinsett County in the State of Arkansas in Township Twelve North Range seven east which are described as follows, to-wit: All of section one; all section two; the north half of section three; the south half of the northeast quarter of section ten, the south half of section ten, all of section twelve, all of section thirteen, the southwest fractional quarter of section fourteen, all section eighteen, all section nineteen, all section twenty, the west half of section twenty one, the north half of the north half of section twenty-four, the west half of the east half of section twenty-eight, all section twenty-nine, and all section thirty, being a part of the lands conveyed to *the* Moses S. Beach by the State of Arkansas, the 12th day of June, 1871, by Patent numbered —.

To have and to hold the above described and conveyed land to the said William B. Beach and to his heirs and assigns forever free from the lawful claims of all persons whomsoever. And we will and out heirs, executors and administrators shall forever warrant and defend the title of the above granted premises to the said William B. Beach and to his heirs and assigns forever, and I the said Mabel R. Beach, wife of the said William B. Beach, for the consideration aforesaid do hereby relinquish and forever release unto the said

William B. Beach and to his heirs and assigns forever all right, claim or possibility of dower in the real estate above mentioned, described and conveyed.

Witness our hands and seals this 18th day of November, 1892, in the year of our Lord Eighteen Hundred and ninety-two.

CHARLES B. BEACH. [SEAL.]
CHARLES Y. BEACH. [SEAL.]
WILLIAM B. BEACH.
MABEL R. BEACH.
ELLA BEACH.
VIOLET BEACH.

In the presence of
CHARLIE RASSANSLELLS.

Witness to Chas. Y. Beach, Wm. B. Beach, Mabel R. Beach:
ROBT. L. CLACKSON.
EMMA B. THAYER.
CHARLES S. EVANS.
ALBERT H. THAYER.

85 STATE OF CONNECTICUT, *County of Fairfield:*

Be it remembered that on this *day* 18th day of November 1892 before the undersigned, a Notary Public within and for the State and County aforesaid personally came Charles Y. Beach and William B. Beach who are personally known to *be* to be the same persons whose names are subscribed to the foregoing Deed and acknowledged the same to be their act and deed for the consideration and purposes therein mentioned and set forth and the said Mabel R. Beach wife of the said William B. Beach being by me first made acquainted with the contents of said deed upon an examination separate and apart from her husband acknowledged that she executed the same and relinquishes her right of dower in and to said lands for the purpose therein contained freely and without fear compulsion or undue influence of her husband.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my official seal on the day and year above written.

CHARLES S. EVANS,
Notary Public for State of Connecticut.

Clerk's Certificate.

STATE OF CONNECTICUT, *County of Fairfield:*

I, William R. Shelton, Clerk of said County and of the Superior Court in and for said County the same being a Court of Record hereby certify that Charles S. Evans was at the date of this certificate of proof or acknowledgment of the annexed instrument a Notary Public within and for said County duly appointed commissioned and sworn and authorized by the laws of said State to administer oaths and take the acknowledgments of deeds and other instruments

and to certify the same and I am well acquainted with his hand writing and verily believe that the signature to the instru-
86 ment hereto annexed is genuine and that said Instrument is executed and acknowledged in conformity with this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Bridgeport in said County and State on the 18th day of November 1892.

[SEAL.] WM. R. SHELTON, *Clerk.*

STATE OF NEW YORK, *County of Westchester:*

Be it remembered that on this 25th day of November 1892 before the undersigned a Notary Public within and for the County and State aforesaid personally came Chloe B. Beach, Emma B. Thayer, Albert H. Thayer, Ella Beach and Violet Beach, who are personally known to *be* to be the same persons whose names are subscribed to the foregoing deed and acknowledged the same to be their acts and deeds for the consideration and purposes therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal on the day and year above written.

CHARLES NASSAN WELLS,
Notary in and for Westchester Co., N. Y.

STATE OF NEW YORK, *Westchester County:*

I, John M. Digney Clerk of the County aforesaid and also Clerk of the County Superior Court in and for said County the same being a Court of Record do hereby certify that Charlie Nassan Wells Esquire whose name is subscribed to the certificate of acknowledgment of the annexed instrument was at the date of said certificate a Notary Publi- in and for said County residing in said County appointed and sworn and duly authorized to take the same and
87 I am well acquainted with the hand writing of said Notary Public and verily believe that the signature to said certificate is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Courts, and County the 25th day of Nov. 1892.

JOHN M. DIGNEY, *Clerk.*

Filed for record Dec. the 6th 1892 and duly recorded Dec. 13th, 1892.

A. A. COPPAGE, *Clerk.*

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full, true and complete copy of the deed wherein Chloe B. Beach *et al.* appear as grantors and William B.

Beach appears as grantee as the same appears of record in Record book " H " pages 444, 445, 446 and 447.

Witness my hand and seal as such Clerk this 20" day of
[SEAL.] January, A. D. 1903.

B. F. COLE, *Clerk.*

(Endorsed on back:) " I " #7. Filed Sept. 11" 1903. B. F. Cole, Clerk.

88 *Deed.*

Wm. B. Beach
to
Chapman & Dewey Land Co.

Stamp $17.50.

Know all men by these presents: That I, William B. Beach and Mabel K. Beach, his wife, of the County of Fairfield and State of Connecticut, for and in consideration of the sum of Seventeen Thousand, Three Hundred and Seventeen Dollars, ($17317.00) to us paid by the Chapman and Dewey Land Company, a corporation created and existing under and by virtue of the laws of the State of Missouri, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do by these presents, grant, bargain, sell and convey unto the said Chapman and Dewey Land Company and unto its successors and assigns forever, all those certain lots, pieces or parcels of land situated lying and being in Poinsett County in the State of Arkansas, in Township Eleven (11) North Range Six (6) East, which are described as follows: All fractional section one (1); all fractional section two (2); all fractional section three (3); the southwest quarter (¼) of section nine (9); the northeast fractional quarter (¼) of section Ten (10); all fractional section Eleven (11) all fractional section twelve (12); the north half (½) of fractional section thirteen (13); the north half (½) of fractional section fourteen (14); the north part of the south (½) of section fourteen (14); the south part of the southwest quarter (¼) of section fourteen (14); all fractional section fifteen (15); the southeast quarter (¼) of section seventeen (17); the east half (½) of the southwest quarter of section seventeen (17); all of section nineteen (19); the north half (½) of section twenty (20); the north half of the southwest quarter (¼) of section twenty (20); the south east quarter (¼) of section twenty (20); all of section twenty one (21); all of section twenty two (22); the northwest quarter (¼) of section twenty three (23); the west part of the southwest quarter of section twenty three (23); all of section twenty
89 seven (27); all of section twenty eight (28); all of section twenty nine (29); all of section thirty (30); all of section thirty-one (31); all of section thirty two (32); all of section thirty three. All those certain lots, pieces or parcels of land situate lying and being in said Poinsett County in Township Twelve (12), North Range six (6) East, which are described as follows to-wit: All

fractional section two (2); all of section three (3); the northeast quarter of section four (4); all of section thirty five (35); all of section thirty six (36); also all those lots, pieces or parcels of land situate, lying and being in said Poinsett County, in Township Twelve (12) North, Range Seven (7) East, which are described as follows to wit: All section one (1); all section two (2); the north half (½) of section three; the south half (½) of the north east quarter (¼) of section ten (10); the south half of section ten (10); all section twelve (12); all section thirteen (13); the southwest fractional quarter of section fourteen (14); all of section eighteen (18); all section nineteen (19); all section twenty (20); the west half of section twenty one (21); the north half (½) of the north half (½) of section twenty four (24); the west half (½) of the east half (½) of section twenty eight (28); all section twenty nine (29); all of section Thirty (30).

To have and to hold unto the said Chapman and Dewey Land Company its successors and assigns forever, and I, the said William B. Beach for myself and my executors and administrators, do covenant with the said Chapman and Dewey Land Company its successors and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances; that I have good right to convey the same as herein done; that I will, and my executors and administrators shall forever warrant and defend the same to the quiet enjoyment of the said Chapman and Dewey Land Company its successors and assigns, against all lawful claims and demands of all persons.

And I, Mabel K. Beach, wife of William B. Beach, the
90 grantor herein, do hereby join in this conveyance, and for the consideration aforesaid, convey and renounce all rights of homestead in and to the said property; and for the consideration aforesaid, do hereby release and relinquish unto the said Chapman and Dewey Land Company its successors and assigns, all right claim and possibility of dower in and to the said property.

In testimony whereof, we have hereunto set our hand- and seals this first day of February 1899.

W. B. BEACH. [SEAL.]
MABEL K. BEACH. [SEAL.]

Witness- to signature
WILLIAM H. MASSEY.
CHAS. S. EVANS.

#132.

STATE OF CONNECTICUT, *County of Fairfield, ss:*

Before me Charles S. Evans a Notary Public within and for the County and State aforesaid, duly commissioned and acting, on this 1st day of February 1899, personally appeared William B. Beach, and Mabel K. Beach, his wife, to me well known, and acknowledged that they had each executed the within and foregoing conveyance for the consideration and purposes therein mentioned and set forth.

And I further certify that the said Mabel K. Beach, ife of the said William B. Beach to me well known as the party signing the foregoing conveyance, and in the absence of her said husband declared that she had of her own free will signed the relinquishment of dower for the purposes therein mentioned and set forth without compulsion or undue influence of her husband and I so certify.

In testimony whereof, I have hereunto set my hand and seal this 1st day of February 1899.

[SEAL.] CHARLES S. EVANS,
Notary Public as Aforesaid.

91 STATE OF CONNECTICUT,
County of Fairfield, County Clerk's Office:

I, William R. Shelton, Clerk of said County and of the Superior Court, in and for said County, the same being a Court of Record, hereby certify, that Charles S. Evans whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public within and for said County residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgment of deeds, and other instruments and to certify the same; that I am well acquainted with his hand writing, and verily believe that the signature to the instrument hereto annexed, is genuine; and that said instrument is executed and acknowledged in conformity with the laws of this State. In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport in said County and State, on the 1st day of February, 1899.

[SEAL.] W. R. SHELTON, *Clerk.*

Filed for record this 6th day of May 1899 and duly recorded on the same day and date.

S. A. BOWEN, *Clerk,*
By W. W. NELMS, *D. C.*

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full, true and complete copy of the deed wherein William B. Beach and wife appear as grantors and the Chapman and Dewey Land Company appear as grantees as the same appears of record in Record Book "M" pages 89, 90, 91 and 92.

92 Witness my hand and seal as such Clerk this 20″ day of January, A. D. 1903.

[SEAL.] B. F. COLE, *Clerk.*

(Endorsed on back:) "J." #8. Filed Sept. 11″ 1903. B. F. Cole, Clerk.

93 Know all men by these presents, That I, William B. Beach and Mabel K. Beach, his wife, of the County of Fairfield in the State of Connecticut for and in consideration of the sum of twenty two hundred and twenty two dollars, ($2222.00), to us paid by Chapman and Dewey Land Company, a corporation created and existing under and by virtue of the laws of the State of Missouri, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey unto said Chapman and Dewey Land Company, and unto its successors and assigns, all those certain lots, pieces or parcels of land situate, lying and being in Craighead County, in the State of Arkansas, in township thirteen (13) North, range six (6) East, which are described as follows:

All fractional section one (1); all fractional section twelve (12); all fractional section thirteen (13); all fractional section twenty three; all fractional section twenty four; all fractional section twenty five; all fractional section twenty six; the south east quarter (¼) of the south east quarter (¼), of section twenty seven (27); all fractional section thirty three (33); all fractional section thirty four (34); all fractional section thirty five (35) all fractional section thirty six (36); with all the privileges, appurtenances and improvements thereupon situate, appertaining and thereunto belonging.

To have and to hold unto the said Chapman and Dewey Land Company, its successors and assigns forever, and I, the said William B. Beach, for myself, my executors and administrators, do convenant with said Chapman and Dewey Land Company, its successors and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all encumbrances; that I have good right to convey the same as herein done; that I will and my executors and administrators shall forever warrant and defend the same to the quiet enjoyment of said Chapman and Dewey
94 Land Company, its successors and assigns, against all lawful claims and demands of all persons. And I, Mabel K. Beach, wife of William B. Beach, the grantor herein, do hereby join in this conveyance, and for the consideration aforesaid, convey and renounce all right of homestead in and to the said property; and for the consideration aforesaid do hereby release and relinquish unto said Chapman and Dewey Land Company, its successors and assigns, all right, claim and possibility of dower in and to the said property.

In testimony whereof, we have hereunto set our hands and seals this first day of February 1899.

W. B. BEACH. [SEAL.]
MABEL K. BEACH. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Stamps $2.50.

Witness- to signatures:

WILLIAM H. MOSSEY.
CHAS. S. EVANS.

STATE OF CONNECTICUT, *County of Fairfield, ss:*

Before me, Charles S. Evans, a Notary Public, within and for the County and State aforesaid, duly commissioned and acting, on this 1st day of February, 1899, personally appeared William B. Beach, and Mabel K. Beach, his wife, to me well known, and acknowledged that they had each executed the within and foregoing conveyance, for the considerations and purposes therein mentioned and set forth.

And I further certify that the said Mabel K. Beach, wife of said William B. Beach, to me well known as the party signing the foregoing conveyance, and in the absence of her said husband declared that she had of her own free will signed the relinquishment of dower for the purposes therein contained and set forth, without compulsion or undue influence of her husband. And I so certify.

95 In testimony whereof, I have hereunto set my hand and seal this 1st day of February 1899.

[SEAL.] CHARLES S. EVANS,
Notary Public as Aforesaid.

STATE OF CONNECTICUT,
County of Fairfield, County Clerk's Office:

I, William R. Shelton, Clerk of said County, and of the Superior Court, in and for said County, the same being a Court of Record, hereby certify. That Charles Evans whose name is subscribed to the certificate of proof, or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgment of deeds and other instruments and to certify the same; that I am well acquainted with his hand writing, and verily believe that the signature to the instrument hereto annexed, is genuine; and that said instrument is executed and acknowledged in conformity with the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 1st day of February 1899.

[SEAL.] W. R. *SHUM, Clerk.*

96 *Certificate of Record.*

STATE OF ARKANSAS, *County of Craighead, ss:*

I, R. H. West Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instruments of writing was filed for record in my office on the 5" day of May A. D. 1899, and the same is now duly recorded with the acknowledgments and certificates thereon, in Record Book 18" Page 455.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 8 day of May 1899.

[SEAL.] R. H. WEST,
Circuit Clerk and Ex-Officio Recorder.
JOHN R. WEST, *D. C.*

Certificate of Record.

STATE OF ARKANSAS,
County of Craighead, Lake City District, ss:

I, R. H. West, Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 18 day of May A. D. 1899, and the same is now duly recorded with the acknowledgments and certificates thereon, in "Record Book 4" page 170.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 19 day of May 1899.

R. H. WEST,
Circuit Clerk and Ex-Officio Recorder,
By A. T. GIBSON, *D. C.*

(Endorsed on back:) "J 1." Wm. M. Beach and Mabel K. (his wife) to Chapman and Dewey Land Co.

97 *Sale Certain Lands to Arkansas Land Co.*

Know all men by these presents, That whereas a decree was rendered in the Circuit Court in and for the County of Poinsett and State of Arkansas at its regular October Term 1883 and whereas a decree supplemental thereto was rendered in the said Court at its regular October Term 1884, in a cause therein pending wherein the State of Arkansas on the relation of Joseph A. Martin was plaintiff and certain lands on which taxes were alleged to be due were defendants condemning to be sold for non-payment of taxes, the following tracts or lots of land (with others) lying in the said County of Poinsett, viz.:

Part of section.	Section.	Township.	Range.	Area.	Price.
Frl. All.....	6	12 N.	7 E.	277.43	16.12
Frl. All.....	7	12 "	7	228.69	13.92

and many other lands. And containing — acres more or less and whereas said land was sold to Henry Hewett as Trustee for John T. Burns for the full amount of the taxes penalty and cost due thereon which amounted to the sum of Two Hundred and Thirty Nine and 53/100 Dollars which sum has been duly paid to me as required by law and whereas the time allowed by law for redemption has expired and whereas the certificate of purchase of the said Henry Hewett for the said lands has been duly assigned to the Arkansas

Land Company and I as Commissioner appointed by said Court in said cause and directed by the Court to execute a deed of conveyance conveying said land to the Arkansas Land Company. Therefore in consideration of the said sum and of the premises aforesaid I as such Commissioner do hereby grant sell and convey unto the said Arkansas Land Company and unto its successors and assigns forever the lands hereinbefore described.

Witness my hand as such Commissioner on this the 6th day of April 1888.

W. G. GODBEY,
Special Commissioner.

98 STATE OF ARKANSAS, *County of Poinsett:*

Be it remembered that on this 6th day of April 1888 before me T. A. Stone Clerk of the Circuit Court within and for the county of Poinsett and State of Arkansas appeared in person W. G. Godbey to me personally well known as the person whose name appears on the foregoing and hereunto attached deed of conveyance as party grantor and stated that he had executed the same as Commissioner in the cause in which the State of Arkansas on relation of Joseph A. Martin is plaintiff and certain lands for non-payment of overdue taxes defendant for the purposes and considerations therein set forth and contained and I do hereby so certify.

Witness my hand and the seal of said Court this the 6th day of April 1888.

[L. S.]

THOS. A. STONE, *Clerk,*
By A. A. COPPAGE, *D. C.*

STATE OF ARKANSAS on Relation of JOSEPH A. MARTIN
vs.
CERTAIN LANDS FOR OVERDUE TAXES, Defendant.

Deed Approved.

Now on this day comes W. G. Godbey the Commissioner in the above entitled cause and presents to the Court here his deed as such Commissioner to the Arkansas Land Company for certain lands sold under decree in this cause which is examined by the court and being found duly executed and acknowledged is by the Court approved and this order of approval is ordered to be endorsed on the said deed and recorded with it.

99 STATE OF ARKANSAS, *County of Poinsett:*

I, T. A. Stone hereby certify that the above and foregoing 16 lines contain a full true and perfect copy of the order of approval of the foregoing and hereto attached deed of conveyance made by the Poinsett Circuit Court at its April Term 1888 as the same appears of record.

Witness my hand and the seal of said Court this 6" day of April 1888.

T. A. STONE, *Clerk.*

Filed for record April 7" 1888 and recorded April 13" 1888.

T. A. STONE, *Clerk.*

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full true and complete copy of the deed wherein W. G. Godby as Commissioner appears as grantor and the Arkansas Land Company appears as grantee and as the same appears of record in this office in Deed Record "F" pages 69 to 79 inclusive.

Witness my hand and seal as such Clerk this 15" day of September 1903.

B. F. COLE, *Clerk.*

(Endorsed on back:) "K" Filed Sept. 11" 1903. B. F. Cole, Clerk.

100 *Warranty Deed.*

Arkansas Land Co.
to
Robert Law.

Know all men by these presents, that the Arkansas Land Company a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin whose principal office is at the City of Mensha Wisconsin for and in consideration of the sum of One Dollar and other valuable considerations, to it in hand paid by Robert Law of the City of Chicago State of Illinois the receipt of which is hereby acknowledged does grant bargain sell and convey unto the said Robert Law and unto his heirs and assigns forever the following described land situated in the County of Poinsett State of Arkansas, to-wit: Frac. All Section No. 6 Twp. No. 12 Range No. 7 E. 277.43 Acres and many other lands.

To have and to hold the same unto the said Robert Law and unto his heirs and assigns forever, with all appurtenances thereunto belonging, and the said Arkansas Land Company hereby covenants with the said Robert Law that it will forever warrant and defend the title to said land against all claims whatever by through and under it.

In testimony whereof the name of the grantor is hereunto affixed by its President and its seal affixed by its Secretary this 16th day of March 1895.

ARKANSAS LAND COMPANY, [SEAL.]

[SEAL.] By A. M. NELSON, *Vice Pres.*

Attest:
JAS. L. FIEWEGER, *Sec'y.*

In presence of
H. B. HEWITT.
HARRY DE WOLF.

101 STATE OF WISCONSIN, *County of Winnebago, ss:*

Be it remembered that on this day came before me the undersigned Notary Public within and for the County and State aforesaid duly commissioned and acting the Arkansas Land Company by J. L. Fieweger its Secretary to me well known as the Secretary of the grantor in the foregoing deed and stated that he had executed same for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on this 16th day of March 1895.

[L. S.] HARRY DE WOLF,
Notary Public, Winnebago County, Wisconsin.

My Com. expires June 1, 1896.

STATE OF ILLINOIS, *County of Cook, ss:*

Be it remembered that on this day came before the undersigned Notary Public within and for the County and State aforesaid duly commissioned and acting the Arkansas Land Company by A. M. Nelson its Vice President to me well known as the Vice President of the Grantor in the foregoing deed and stated that he had executed the same for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal this 18th day of March, 1895.

CHAS. M. BRAGG,
N. P., Cook County, Illinois.

My Commission expires Aug. 8" 1895.

Filed in my office for record August 12" 1895 and duly recorded on the same day and date.

J. C. MITCHELL,
Clerk and Recorder.

102 STATE OF ARKANSAS, *County of Poinsett, ss:*

I, B. F. Cole, Clerk of the Circuit Court, within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full, true and complete copy of the deed wherein the Arkansas Land Company appears as grantor and Robert Law appears as grantee as the same appears of record in this office in Deed Record "J" at pages 151, 152, 153, 154, 155, 156 & 157.

Witness my hand and seal this 15th day of September, 1903.

[SEAL.] B. F. COLE, *Clerk.*

(Endorsed on back:) (L) Arkansas Land Co. to Robt. Law Filed Sept. 11" 1903. B. F. Cole, Clerk.

103 Stamp $1.00.

Warranty Deed.

This indenture, made and entered into in this, the 15 day of June 1900 by and between Robert H. Law and Mary L. Law his wife, and Elizabeth A. Ware and Lyman Ware her husband, only heirs of Robert Law, a widower who died intestate on Feby. 24/98, of the City of Chicago in the State of Illinois party of the first part, and the Chapman and Dewey Land Company. A corporation existing under the laws of the State of Missouri. of the City of Kansas City in the State of Missouri party of the second part.

Witnesseth: That the party of the first part, for and in consideration of the sum of five hundred and forty eight and 50/100 Dollars, to it in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the party of the first part has this day granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and unto their heirs and assigns forever, all of the right, title, claim, interest and estate of the party of the first part in and to the following described land, situated in the County of Poinsett in the State of Arkansas to-wit: The fractional all of section six (6) Township twelve (12) and Range seven (7) east, containing two hundred and seventy seven (277) acres more or less.

To have and to hold the above described and conveyed premises unto the said party of the second part and to their heirs and assigns forever, with all the privileges and appurtenances thereto belonging. And the party of the first part by these presents covenants to and with the party of the second part that it will warrant and defend the title to the above granted premises unto the said party of the second part, and unto their heirs and assigns forever, against the claims and demands of all persons who claim the same by, through or under the said party of the first part.

104 In Testimony Whereof, the party of the first part has caused these presents to be executed and signed this 16" day of June A. D. 1900.

ROBERT H. LAW. [SEAL.]
MARY L. LAW. [SEAL.]
ELIZABETH A. WARE. [SEAL.]
LYMAN WARE. [SEAL.]

STATE OF ILLINOIS, *Cook County, ss:*

Personally appeared before me, Robert H. Law, Mary L. Law, Elizabeth A. Ware & Lyman Ware the within named bargainers with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the considerations and purposes therein contained, and I so certify.

Witness my hand and Notarial Seal this 16th day of June A. D. 1900.

[SEAL.] JOHN N. CLARKS,
Notary Public.

My Commission expires July 21, 1901.

STATE OF ILLINOIS, *County of Cook, ss:*

I, John N. Clarke, a Notary Public within and for said county and State, do hereby certify that on this day before me, personally appeared Mary L. Law and Elizabeth A. Ware to me well known to be the persons whose names appear signed to the foregoing deed and in the absence of their said husbands after being by me first made acquainted with the contents of said deed, acknowledged and declared that they had executed said deed and had signed the relinquishment of dower in said land for the consideration and purposes therein mentioned and set forth without compulsion or undue influence of their said husbands.

Witness my Hand and official seal on this 16" day of June A. D. 1900.

JOHN N. CLARKE,
Notary Public, 303 S. Irving Ave.

My Commission expires July 21, 1901.

105 *Certificate of Record.*

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, S. A. Bowen, Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 11th day of July A. D. 1900, at — o'clock — M., and the same is now duly recorded with the acknowledgments and certificates thereon, in "Record Book" "O" pages 112 & 113.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 11th day of July 1900.

[SEAL.]

S. A. BOWEN,
Circuit Clerk and E- Officio Recorder.

(Endorsed on back:) "M" Filed for Record July 11th 1900. S. A. Bowen, Clerk. Filed Sept. 11" 1903. B. F. Cole, Clerk.

106 *Clerk's Deed.*

Clerk's Deed of Tax Sale.

Know all men by these Presents: That Whereas, The following described property, to-wit: Fr. E ½ Sec. 6 Town. 12 N. R. 7 E. situate in the County of Poinsett and State of Arkansas, was subject to taxation for the year A. D. 1897;

And Whereas, The taxes assessed upon said real property for the year aforesaid, remain due and unpaid at the date of the sale hereinafter named;

And Whereas, The Collector of the Revenue of said County, did on the 13th day of June A. D. 1898, by virtue of the authority in

him vested, by law, at the sale begun and publicly held on the second Monday in June A. D. 1898 expose to public sale, at the Court-house in the County aforesaid, in substantial conformity with all the requirements of the statutes in such cases made and provided, the real property above described, for the payment of the taxes, penalty and costs then due and remaining unpaid on said property;

And Whereas, At the time and place aforesaid, Chapman and Dewey Land Company a corporation of the County of Jackson and the State of Missouri having offered to pay the sum of Seven Dollars, and 97 cents, being the whole amount of the taxes, penalty and costs then remaining due and unpaid on said property, for Fr. E ½ Sec. 6 Township 12 North R. 7 Eas. which was the least quantity bid for, and payment having been by him made to said Collector, said property was stricken off to him at that price;

And Whereas, Two years have elapsed since the date of said sale, and said property has not been redeemed as provided by law;

And Whereas, The said Chapman and Dewey Land Company a corporation having produced and presented to me the certificate of purchase executed to him by the Collector of the Revenue of said County;

Now Therefore, I, S. A. Bowen, Clerk of the County Court of the County aforesaid, in consideration of the said sum of money
107 to the Collector paid as aforesaid, and by virtue of the statutes in such cases made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Chapman and Dewey Land Company a corporation his heirs and assigns, the real property aforesaid, and more particularly described as follows: to-wit: Fractional East half of section Six (6) Township (12) North and in Range Seven (7) East 277 acres.

To have and to hold, unto them the said Chapman and Dewey Land Company a corporation his heirs and assigns forever; subject, however, to all the rights of redemption provided by law.

In witness whereof, I, S. A. Bowen, Clerk of the County Court aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name on this 14 day of June A. D. 1900.

S. A. BOWEN,
Clerk of the County Court of Poinsett, Ark.

Acknowledgment.

STATE OF ARKANSAS, *County of Poinsett, ss:*

I hereby certify that before me a Notary Public in and for said County, personally appeared the above named S. A. Bowen clerk of the county court of said county, at the date of the execution of the above and foregoing conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance, as clerk of the county court of said county, and acknowledged that he, as clerk of the County Court of said County, had executed the same

for the considerations, uses and purposes therein contained and set forth, and desired the same certified which is done.

Given under my hand and seal, on this 14 day of June 1900.

[SEAL.] LOUIS G. MINTON,
Notary Public.

My Com. Expires Jan. 17th, 1903.

108 *Certificate of Record.*

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, S. A. Bowen Circuit Clerk and *Ex-Officio* Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 14th day of June A. D. 1900, and the same is now duly recorded, with the acknowledgments and certificates thereon, in "Record Book N" page 24.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this 14 day of June 1900.

[SEAL.] S. A. BOWEN,
Circuit Clerk and Ex-Officio Recorder.

(Endorsed on back:) "N" 7 "A." Clerk's Tax Deed. S. A. Bowen to Chapman & Dewey. Filed for Record 14th June 1900. S. A. Bowen, Clerk. Recorded June 14 1900. Filed Sept. 11" 1903. B. F. Cole, Clerk.

109 *Clerk's Deed of Tax Sale.*

Know all men by these Presents: That whereas, the following described property, to-wit: Fr. E. ½ Sec. 7 Township 12 N. Range 7 E. 228 acres situate in the County of Poinsett and State of Arkansas, was subject to taxation for the year A. D. 1897.

And whereas, the taxes assessed upon said real property for the year aforesaid, remain due and unpaid at the date of the sale hereinafter named.

And whereas, the Collector of Revenue of said County, did on the 13th day of June A. D. 1898, by virtue of the authority in him vested, by law, at the sale begun and publicly held on the second Monday in June A. D. 1898 expose to public sale, at the Court house in the county aforesaid, in substantial conformity with all the requirements of the statutes in such cases made and provided, the real property above described, for the payment of the taxes, penalty and costs then due and remaining unpaid on said property.

And whereas, at the time and place aforesaid, Chapman and Dewey Land Company a Corporation of the County of Jackson and the State of Missouri having offered to pay the sum of Seven Dollars and 10 cents being the whole amount of the taxes, penalty and costs then remaining due and unpaid on said property, for Fr. E. ½ Sec. 7 Township 12 North Range 7 East, which was the least quantity

bid for, and payment having been by him made to said Collector, said property was stricken off to him at that price;

And whereas, Two years have elapsed since the date of said sale, and said property has not been redeemed as provided by law;

And whereas, the said Chapman and Dewey Land Company a Corporation having produced and presented to me the certificate of purchase executed to him by the Collector of the Revenue of said County;

Now therefore, I, S. A. Bowen, Clerk of the County Court of the County aforesaid, in consideration of the said sum of money
110 to the Collector paid as aforesaid, and by virtue of the statutes in such cases made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Chapman and Dewey Land Company a Corporation its successors and assigns, the real property aforesaid, and more particularly described as follows, to-wit: Fractional East half of Section seven (7) Township Twelve (12) Nort- and in Range Seven (7) East 228 acres.

To have and to hold unto them the said Chapman and Dewey Land Company a Corporation its successors and assigns forever; subject, however, to all the rights of redemption provided by law.

In witness whereof, I, S. A. Bowen Clerk of the County Court aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name on this 14th day of June A. D. 1900.

S. A. BOWEN,
Clerk of the County Court of Poinsett, Ark.

Acknowledgment.

STATE OF ARKANSAS, *County of Poinsett, ss:*

I hereby certify that before me a Notary Public in and for said county, personally appeared the above named S. A. Bowen Clerk of the County Court of said County, personally known to me to be the Clerk of the County Court of said County, at the date of the execution of the above and foregoing conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance, as Clerk of the County Court of said County, and acknowledged that he, as Clerk of the County Court of said County, had executed the same for the considerations, uses and purposes therein contained and set forth, and desired the same certified which is done.

111 Given under my hand and seal, on this 14 day of June 1900.

[SEAL.] LOUIS G. MINTON,
Notary Public.

Comm. Expires Jan. 17th, 1903.

Certificate of Record.

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, S. A. Bowen Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 14 day of June A. D. 1900, and the same is now duly recorded, with the acknowledgments and certificates thereon, in "Record Book N" page 23.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 14 day of June 1900.

[SEAL.]

S. A. BOWEN,
Circuit Clerk and Ex-Officio Recorder.

Endorsed on back:) "O" 7*b*. Clerk's Tax Deed. S. A. Bowen to Chapman & Dewey. Filed for Record 14th June 1900. S. A. Bowen, Clerk. Recorded June 14 1900. Filed Sept. 11" 1903. B. F. Cole, Clerk.

112 Stamp. 50.

Warranty Deed.

This indenture, made and entered into on this, the 15 day of June, 1900 by and between the Arkansas Land Company, a corporation chartered, organized and acting, under and by virtue of the laws of the State of Wisconsin, and having its principal office and place of business in the City of Menasha, in the State aforesaid, party of the first part, and The Chapman and Dewey Land Company a corporation existing under the laws of the State of Missouri of the City of Kansas City in the State of Missouri party of the second part.

Witnesseth: That the party of the first part, for and in consideration of the sum of four hundred and fifty one and 50/100 Dollars, to it in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the party of the first part has this day granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and unto their successors and assigns forever, all of the right, title, claim, interest and estate of the party of the first part in and to the following described land, situated in the County of Poinsett, in the State of Arkansas, to-wit:

The fractional all of section seven (7) Township Twelve (12) North and Range seven (7) east containing two hundred and twenty eight (228) acres more or less.

To have and to hold the above described and conveyed premises unto the said party of the second part and to their successors and assigns forever, with all the privileges and appurtenances thereunto belonging. And the party of the first part by these presents cove-

nants to and with the party of the second part that it will warrant and defend the title to the above granted premises unto the said party of the second part, and unto their successors and assigns forever, against the claims and demands of all persons who claim the same by, through or under the said party of the first part.

113 In testimony whereof, the party of the first part has caused these presents to be executed and signed by its President, and attested by its Secretary, and the seal of said corporation to be hereunto affixed at its said office, on this, the date and year first above written.

ARKANSAS LAND COMPANY,
[SEAL.] By ROBERT H. LAW, *President.*

Attest: JAS. L. FIEWEGER, *Secretary.*

Acknowledgment.

STATE OF ILLINOIS, *County of Cook:*

Be it remembered, that on this, the 18th day of June A. D. 1900 before me, John N. Clarke a Notary Public within and for the County of Cook in the State of Illinois personally came and appeared Robert H. Law President of the Arkansas Land Company, which is a corporation created, organized and acting under and by virtue of the laws of the State of Wisconsin, who is to me personally well known to be the person whose name appears signed to the foregoing Deed of Conveyance, as acting President of said corporation, and acknowledged and declared to me, that he had, for and on behalf of said Arkansas Land Company, and at its instance and request, and in its name and as its Acting President, duly executed, signed, sealed and delivered the foregoing Deed of Conveyance for the uses, purposes and considerations therein mentioned and set forth.

In testimony whereof, I, John N. Clarke as such Notary Public have hereunto subscribed my name, and affixed my official seal, at my office in the City of Chicago in the State of Illinois on this, the day and date first above written.
[SEAL.]

JOHN N. CLARKE,
Notary Public.

My Commission Expires on the 26th day of July, 1901.

114 *Certificate of Record.*

STATE OF ARKANSAS, *County of Poinsett, ss:*

I, S. A. Bowen, Circuit Clerk and *Ex-officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 11th day of July A. D. 1900, at — o'clock — M., and the same is now duly recorded with the acknowledgments and certificates thereon, in "Record Book "O" pages 111 and 112.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 11th day of July 1900.

S. A. BOWEN,
Circuit Clerk and Ex-Officio Recorder.

(Endorsed on back:) "P." Filed Sept. 11" 1903. B. F. Cole, Clerk. Filed for Record July 11th 1900. S. A. Bowen, Clerk.

115 *Decree of Confirmation.*

Chapman and Dewey Land Company.

Ex Parte.

Decree of Confirmation.

Comes the Petitioner herein, the Chapman and Dewey Land Company, a Corporation chartered and doing business under and by virtue of the laws of the State of Missouri by its Solicitor L. C. Going, and this cause is heard upon the petition for a Decree Confirming the Tax Sales and Tax Deeds hereinafter mentioned, and exhibits thereto attached, Tax Deeds, Tax Receipts, oral and record evidence, the confirmation Notice and proof of its publication as required by law, from all of which, the Court finds that said Petition was filed twenty days prior to the first day of the present term of this court and that the Notice of this proceeding required by law was given and published in full compliance with the Statute and that at the regular sale of delinquent lands held in said county on the 13th day of June, 1898, the following tracts of land to-wit: Fractional East half of Section Six (6) in Township Twelve (12) North, in Range Seven (7) East, and the Fractional East half of Section Seven (7) in Township Twelve (12) North in Range Seven (7) East and the East half of the North East Quarter of Section Seventeen (17) in Township Eleven (11) North in Range Seven (7) East, were separately offered for sale and sold to petitioner by the Collector of the Revenue of said County, for the taxes, penalty and costs thereon due for the year 1897, and each tract was separately conveyed to petitioner by a Tax Deed dated on the 14th day of June, 1900 duly executed by S. A. Bowen as County Court Clerk of said County. That at the regular sale of lands for delinquent Taxes held in said County on the 12th day of June, 1899, the following described tract of land, to-wit: South half of Section Thirteen (13) lying South of River, in Township Eleven (11) N. Range Six (6) East was sold to petitioner by the Collector of the Revenue of said County, for the taxes, penalty and cost
116 thereon due for the year 1898, and was conveyed to petitioner by a Tax Deed dated on the 1st day of July, 1901, duly executed by B. F. Cole as County Court Clerk of said County, and that Petitioner has paid the taxes on said lands for the three years next before filing his petition. And the court further finds from

the affidavits of L. C. Going and William Ainsworth that there is no one in the possession of any of said lands holding adversely to petitioner. It is therefore adjudged and decreed by the Court that the Tax Sales and Tax Deeds above set out be and the same are in all things confirmed.

Certificate.

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit and Chancery Courts within and for said County do hereby certify that the above and foregoing is a true and perfect copy of the decree rendered by the Chancery Court of Poinsett County, Arkansas at its September Term 1902 in the cause of Chapman and Dewey Land Company *Ex Parte,* as the same appears from Chancery Court Record Volume "C" at pages 53 & 54.

Witness my hand and official Seal on this 15 day of Sept. 1902.

[SEAL.] B. F. COLE, *Clerk.*

117 *Certificate of Record.*

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court and *Ex-Officio* Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 15″ day of Sept. A. D. 1902, at —— o'clock — m., and the same is now duly recorded, with the acknowledgment and certificate thereon, in Record Book, Vol. "Q," Page 326.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 16″ day of Sept. A. D. 1902.

B. F. COLE, *Clerk,*
By W. W. NELMS,
Deputy Clerk.

(Endorsed on back:) "Q" Chapman & Dewey Land Company. Filed Sept. 11″ 1903. B. F. Cole, Clerk. Filed for Record on this 15th day of Sept. 1902. B. F. Cole, Clerk, By W. W. Nelms, D. C.

118 *Decree.*

CHAPMAN & DEWEY LAND CO., *Ex Parte.*

Comes the petitioner herein, Chapman & Dewey Land Company, by its solicitors, and this cause is submitted to the Court upon the petition, proof of publication of notice and deeds and evidences of title of petitioner and affidavits of witnesses as provided by law. And it appearing to the Court that it is a proceeding to confirm the title of the petitioner to certain lands, the Court doth find that the petitioner Chapman & Dewey Land Company is the owner in

fee simple of the following described lands, situate in Poinsett County, Arkansas, to-wit:

Frl. N. E. ¼ of N. W. ¼ of Sec. 14 Twp. 10 N. R. 7 E.
Frl. All of Sec. 6 Twp. 12 N. R. 7 E.
Frl. All of Sec. 7 Twp. 12 N. R. 7 E.
N. E. ¼ of Sec. 22 Twp. 11 N. R. 7 E.
W. ½ S. E. ¼ of Sec. 22 Twp. 11 N. R. 7 E.
Frl. All of Sec. 23 Twp. 12 N. R. 7 E.
S. ½ of N. ½ of Sec. 24 Twp. 12 N. R. 7 E.
W. ½ S. W. ¼ of Sec. 4 Twp. 11 N. R. 7 E.
W. ½ N. E. ¼ of Sec. 7 Twp. 11 N. R. 7 E.
N. W. ¼ S. W. ¼ of Sec. 19 Twp. 11 N. R. 5 E.

The Court doth further find that there is no adverse occupant of the lands above described, claiming title thereto adverse*d* to petitioner and that proper notice of the filing of the petition herein and of this proceeding, has been duly published as provided by law; proof thereof being made here and now in this Court; that the allegations of the petition herein with respect to the lands aforesaid are true.

It is therefore considered by the Court, ordered and decreed that the title of the petitioner Chapman & Dewey Land Company to the lands above described and each and every tract thereof be and the same is hereby established, quieted and confirmed, but this
119 decree shall be without prejudice to any right that may exist in the Board of Directors St. Francis Levee District with respect to any unsurveyed lands lying and adjacent to any of the lands above described.

As to all lands described in the petition herein and not hereinbefore described in this decree, this cause is continued until next term of this Court.

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the above and foregoing is a full, true and complete copy of the Decree rendered in the Poinsett Chancery Court at its September Term 1901 and which appears of record in Chancery Court Record "B" pages 551 and 552.

In testimony whereof, I have hereunto set my hand and seal this 14" day of Octo. A. D. 1901.

[SEAL.] B. F. COLE, *Clerk.*

120 STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court and *Ex-Officio* Recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 12th day of March 1902; and the same is now duly recorded in Deed Record "Q" at pages 7 & 8 inclusive.

In testimony whereof, I have hereunto set my hand and the seal of said Court this March 12th 1902.

[SEAL.]

B. F. COLE, *Clerk*,
By M. H. FRAYSER, *D. C.*

(Endorsed on back:) "R" Filed for record March 12th 1902. B. F. Cole, Clerk. By M. H. Frayser, D. C. Filed Sept. 11" 1903. B. F. Cole Clerk.

121 In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN & DEWEY LAND COMPANY, Plaintiff,
vs.
CHAS. H. BIGLOW, N. P. BIGLOW, L. T. WALKER, and F. H. HARTSHORN, Defendants.

Answer.

The defendants named in the caption for answer to the complaint in this case state:

They admit that the plaintiff, the Chapman & Dewey Land Company, is a corporation organized under the laws of the State of Missouri and admit that it is authorized to do business in the State of Arkansas. These defendants admit that they are non-residents of the State of Arkansas.

These defendants admit that the lands described in the complaint were by the Act of Congress of September 28th 1850 granted to the State of Arkansas as Swamp and Overflowed lands and defen-ants admit that they are all swamp and overflowed lands within the test fixed by the said Act of Congress.

These defendants admit that in pursuance of said Act of Congress the tracts described in paragraph 3 of plaintiff's complaint were selected, approved and patented to the State of Arkansas as lands inuring to it under the said grant of the United States; but it is also true that by the grant of the United States to the State of Arkansas the title to all land within the Townships 12 North Range 6 East and 12 North Range 7 East passed to the State of Arkansas, as well as the title to the tracts described by plaintiff, the said townships having been granted by the United States to the State of Arkansas as a whole, whereby all land within the borders of said townships became the property of the State of Arkansas regardless whether it had been surveyed into sections, or included in meandered lines or not.

122 Defendants admit it is true that prior to the transfer of the United States to the State of Arkansas surveys had been made of the land in the said townships under the direction and authority of the Government of the United States, and field notes of said survey returned to the Surveyor General at the General Land Office in Washington and that copies thereof were duly filed in the State Land Office in the State of Arkansas.

These defendants say it is not true that said survey showed no land whatever in the greater part of Township 12 North Range 6 East, and not true that the plats made up from the survey showed no land in the greater part of said Township. These defendants state the truth to be that the record of the survey shows there was land in fact where plaintiff alleges no land is shown. Neither is it true that the record of the surveys indicate that there is no land at such places. These defendants state that the said record- of the survey show that willow and cypress timber was at the time of the survey growing on that part of the township at which it is alleged by plaintiff no land was shown to exist. It is also true that the records of the survey show that at the time of the survey the water was high, but that it could be surveyed at dry seasons of the year; and it is not true that the plats made from the survey show no land to have existed, as plaintiff alleges; but, on the contrary, that portion of the plat that is marked "Sunk Lands" thereby indicating that the place is not a body of water, but a body of land, sunk.

It is true that the sunken portion is indicated on the Government plats in the same way that a body of water is usually indicated, but it is called "sunk lands," and the record of the said survey shows it to have been land at that time, not water, and having upon it a growth of willow and cypress timber.

These defendants neither admit -or deny, for they have not information sufficient to form a belief, as to whether or not the survey in meandering the southern boundary of Hatchie Coon Island calls for the margin of St. Francis, but defendants deny that in
123 all cases the survey calls for the margin of said river, but if it does so call for the margin of said River on the southern boundary of Hatchie Coon Island, it was a mistake of the surveyor to so name it, for it was several miles from that point to the St. Francis River. These defendants state that in making said survey the surveyors were easily mistaken as to the location of St. Francis River, having made the survey at a time when it would be out of its banks and often being unable to get within several miles of it, and it is manifest that in some cases they would call for St. Francis River, when all they could have meant was that they had reached water, which was the overflow from St. Francis River, or some small bayou or cut off of said stream, the fact being that the so called sunk lands are a body of lands lying on both sides of St. Francis River, sunk, and in the rainy season easily overflowed, and at the time of the survey the meandered lines were run around this body of sunk and overflowed lands as if it had been a body of water, but at the same time the field notes showed that it was not a body of water, but land covered with water and also bearing trees and vegetation, willow and cypress.

And these defendants say that the meandered line alleged by plaintiff to be run through Sections 4, 3 and 2 being several miles distant from the St. Francis River were run as boundaries without regard to whether they called for the River or not, and were not run for the purpose of finding the number of acres in the several subdivisions

meandered for which purchasers would have to pay when the Government might dispose of the land.

These defendants say that the meandered lines alleged in paragraph 6 of plaintiff's complaint to have been run through Section 36 in Township 12 North Range 6 East were run as boundaries and not for the purpose of finding the quantity of land in the several subdivisions, for which the purchaser should pay.

124 These defendants say that the meandered line alleged by plaintiff in paragraph 7 of its complaint to have been run through Sections 6, 7, 18, 19 and 30, Township 12 North Range 7 East were run as boundaries, the fact being that several miles of sunken land covered with water and willow and cypress trees lay between said meandered land and the St. Francis River.

These defendants admit that on the 12th day of June, 1871, the State of Arkansas delivered to Moses S. Beach certain patents or deeds conveying the land described by plaintiff in the 8th paragraph of its complaint and admits that said patents or deeds are recorded.

Defendants admit that Moses S. Beach died intestate, leaving his widow and children, as plaintiff alleges in the 9th paragraph of its complaint and that they conveyed to Wm. B. Beach, as plaintiff alleges.

These defendants admit that on February 1st, 1899, Wm. B. Beach and Mabel K., his wife, conveyed said lands to plaintiff.

These defendants admit that plaintiff has title to Section 36 in Township 13 North Range 6 East, by the same chain of conveyances last before mentioned.

These defendants deny that any decree was rendered by the Circuit Court of Poinsett County in what was known as the Overdue Tax Act declaring a lien for back taxes on all of Section- 6 and 7 in Township 12 North Range 7 East; they deny that said lands were sold under such decree and bought by the Arkansas Land Company and deny that said Arkansas Land Company afterwards by decree of the Chancery Court of Poinsett County confirmed its title to said tracts.

Defendants admit that the Arkansas Land Company executed a paper purporting to convey said tracts to plaintiff and defendants deny that by virtue of said conveyance or any conveyance plaintiff is the owner of said Sections 6 and 7.

125 Answering paragraph 11 of plaintiff's complaint these defendants deny that the plats and field notes now on file and of record in the General Land Office of the United States and in the Land Office of the State of Arkansas show all of said conveyed lands and the legal subdivisions thereof to have been bounded by a body of water but they do show that said tracts were bounded by water temporarily there and among the vegetation, willows and cypress which composed the growth on the land. It is true that said lands and the legal subdivisions thereof were meandered, but these meandered lands even where they called for the St. Francis River were many miles distant from the said River and were run as boundaries.

These defendants deny that by process of accretion or reliction the line of said tracts bordering on the water was gradually extended

and deny that said tracts and each of them were gradually filled up by the imperceptible increase caused by deposits of earth, sand or sediment, and deny that the land named extends a considerable distance further toward the main channel of the river, the fact being that the land at all times extended toward the main channel of the river, though at times overflowed, as it yet is at times.

These defendants say it is true that there is now outside of and beyond the original lines of said survey as above set out and east of the main channel of the St. Francis River a considerable body of land adjacent to each of the tracts before mentioned, but defendants deny that such land forms a part of said tracts, or either of them and deny that any of said land accrued to the plaintiff by reason of any accretion or reliction.

These defendants deny that by accretion and reliction, or either of them, the southern part of Hatchie Coon Island in Section- 2, 3 and 4 has been built up and extended over what would be Sections 9, 10, 11 and 15 of the lines of the original survey were extended, the fact being that the said land in Sections 9, 10, 11 and 15
126 were there at the time of the original survey and they are not accretions formed to Sections 2, 3 and 4.

These defendants have no information sufficient to form a belief as to whether or not there is a strip 600 feet wide outside of and immediately against the lands alleged to have been made to the original tracts, neither have they knowledge nor information sufficient to form a belief of the extent of the strip 1700 feet further in front, but if said strips exist they are remote from anything to which plaintiff has title and it has no interest in them by accretion or otherwise.

These defendants admit *that* the existence of the slough on the east side of Hatchie Coon Island and that it is covered with a growth of cypress and gum timber, flag and willow and coarse grass, that at certain places it is known as the "Scatters" and forms a body of land 6 miles wide from east to west, as plaintiff alleges, but these defendants submit it cannot be a matter in which the plaintiff has any interest.

In answer to paragraph 12 of plaintiff's complaint defendants admit that in the year 1900 Jas. Anthony, a surveyor in the employ of the Board of Directors of the St. Francis Levee District, undertook to survey the lands which lay outside of and beyon- the lines run by the Government surveyor and defendants say it is true that Jas. Anthony did survey said lands, being the lands not subdivided into sections and parts thereof by the Government surveyors, because of the water then covering them, and such survey made by Jas. Anthony and field notes and plats defendants admit are filed in the office of the Recorder of Poinsett County, and these defendants admit that such survey and plats show the main channel of the St. Francis River definitely.

Answering paragraph 13 of plaintiff's complaint defendants admit the conveyance by the Board of Directors of the St. Francis
127 Levee District to C. H. Bodkin conveying the lands described by plaintiff in said paragraph and being the lands surveyed

by Jas. Anthony as aforesaid. And defendants admit that said deed purports to convey the Frl. Sections lying without the meandered line of the United States, surveyed as plaintiff alleges.

And defendants admit the conveyance of the said lands by C. H. Bodkin and wife to H. C. Williamson and from H. C. Williamson and wife to these defendants, as tenants in common.

These defendants deny that by virtue of the patents and conveyance and the Government survey and plats and field notes plaintiff is the owner in fee of the lands described in the said deed from the Board of Directors of the St. Francis Levee District to said Bodkin and subsequently conveyed through H. C. Williamson to these defendants; on the contrary, these defendants say that plaintiff has no character of claim to any portion of the lands so surveyed by Jas. Anthony and subsequently conveyed, as above set out, to these defendants deny that the said deeds to them and their grantors are clouds upon anything that is property of plaintiff and especially deny that they are clouds upon the plaintiff's title to said lands for the reason that it has no title thereto.

These defendants admit that notices have been posted warning all persons to desist from trespassing upon the lands in Township 12 North Range 6 East, but defendants say that their claim to said lands is good, that they have a right to prevent trespassing thereon and that their acts are no interference with any right of plaintiff, and they deny that they have damaged plaintiff by reason of their claim. Defendants admit that the lands are wild and unimproved.

And having fully answered defendants ask that they be discharged.

And as a matter of cross-complaint against the plaintiff
128 the defendants, Chas. H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn, state that they are the owner of the following lands situated in the county of Poinsett, in the State of Arkansas, to-wit:

All Section 1, all section 10, Section 11, All section 12, all Section 13, all Section 14, all Section 23, all Section 24, all Section 26, all Section 34, all Frl. Section 9, all Frl. Section 15, all Frl. Section 22, all Frl. Section 25, all Frl. Section 27, all Frl. Section 28, all Frl. Section 33, all Frl. Section 35, all Frl. Section 36, outside meander line all Frl. Section 2, all in Township 12 North of the Base Line in Range 6 East of the Fifth Principal Meridian, all east of St. Francis River.

And all Frl. Section 3, Township 12 North 6 East lying south of meandered line as per original U. S. Survey as shown by plats of date of August 8, 1849, in figures 167.47. All Frl. Section 4, Township 12 North Range 6 East lying west and south of meandered line as per original U. S. Survey as shown by plats of date August 8, 1894, 249.99 acres. All Frl. Section 18, township 12 North Range 7 East lying West of meandered line as per original U. S. Survey as shown by plats of date October 27, 1845, 503.03 acres. All Frl. Section 19 Township 12 North Range 7 East lying West of meandered line as per original U. S. Survey as shown by plats of date October 27, 1845, 230.12 acres. And containing in all Eleven

Thousand Five Hundred and Forty-two and 96/100 acres (11,542.96), more or less. All according to the Anthony survey of September and October 1900, recorded in Plat Book "B" pages 1, 2 and 3 with Field Notes for same in Plat Book "B" pages 5 and 6.

And that the title of the original defendants, plaintiffs in this cross bill, to said lands is as follows:

1. They were granted to the State of Arkansas by an Act of Congress of the United States, approved on the 28th day of
129 September, 1850, an Act known as the Swamp and Overflow Act.

That it was a part of said Act of Congress that it should be the duty of the Secretary of the Interior as soon thereafter as practicable to make up an accurate list and plat of such lands as would be, by reason of being overflowed, unfit for cultivation and to transmit the same to the Governor of the State of Arkansas; that subsequently the Secretary of the Interior included in a list of swamp and overflowed lands transmitted to the Governor of the State of Arkansas the whole of Township 12 North Range 6 East and Township 12 North Range 7 East, and a patent for said Townships was granted to the State of Arkansas, and these cross complainants file herewith certified copies of said patent in so far as it affects these Townships marked Exhibit "A," to this cross complaint. And by this grant from the United States to the State of Arkansas, and the patent from the United States to the State of Arkansas, made after the selection of said lands as swamp lands, the legal title to all lands in said Townships, whether then subdivided into sections or not, passed to the State of Arkansas; and the said legal title so acquired by the State of Arkansas to all lands in said Townships, which had not been laid out in sections by the surveyors for the United States Government, remained in the State of Arkansas until the year 1893.

2. In the year 1893 the State of Arkansas, by an Act of its Legislature, created the Board of Directors of the St. Francis Levee District, the purpose being to erect a levee against the waters of the Mississippi River and protect what is known as the St. Francis Basin from overflow by the Mississippi River; that the lands concerning which plaintiffs bring this suit, and cross complaints file this cross bill, are a portion of the said St. Francis Basin and are originally and naturally subject to overflow from the Mississippi River.
130 That after creating the Board of Directors of the St. Francis Levee District, the State of Arkansas by its Legislature, to aid in the erection of said levee, granted to the Board of Directors of the St. Francis Levee District of lands within said District, the title to which was in the State of Arkansas; that this act of donation by the Legislature of the State of Arkansas went into effect on the 29th day of March, 1893, and thereby the legal title to the unsurveyed lands in Township 12 North Range 6 East and Township 12 North Range 7 East became vested in the Board of Directors of the St. Francis Levee District.

3. That, so holding the legal title to said lands the Board of Directors of the St. Francis Levee District, on the 11th day of October, 1900, conveyed the lands for which plaintiffs in the original

bill sued to C. H. Bodkin and executed him a deed therefor, and on the 11th day of January, 1901, to cure some imperfections in the original deed, executed to C. H. Bodkin an additional deed for said lands, a copy of which cross complain-ts file herewith marked Exhibit "B."

4. On the 12th day of January, 1901, C. H. Bodkin and wife conveyed said lands to H. C. Williamson by warranty deed, a copy of which cross complain-ts file herewith marked Exhibit "C."

5. That on the 24th day of January, 1901, H. C. Williamson and wife by warranty deed conveyed said lands to these cross complainants, Chas. H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, and they file herewith a copy of their deed marked Exhibit "D."

All of said conveyances, excepting such as are granted to the State of Arkansas by the United States, and to the Levee Board by the State of Arkansas are of record in the Recorder's office in Poinsett County, Arkansas.

These cross complain-ts further state that the original complainants, defendants in this cross bill, the Chapman & Dewey Land Company, is without title to said lands, or any portion thereof,
131 but, notwithstanding these cross complainants are the owners of the legal title, the said Chapman & Dewey Land Company has prior to this present unfounded suit filed by it, previously filed and pretended to prosecute a similar suit (which it voluntarily dismissed), to the annoyance of these cross complainants and to their detriment and injury in this, that by the filing of such suits, and by the assertion of the unfounded claim of the defendant, the Chapman & Dewey Land Company, a suspicion is thrown upon the title of these cross complainants and, if the value of their title is not lessened in the market, it is still true that they are annoyed and harassed by continually having to meet the charge that Chapman & Dewey, defendants in this cross bill, are laying claim to the land and intending to assert title to it.

That while it is true that no claim on the part of the defendants, Chapman & Dewey, can in any wise impair the legal title of these cross complainants, they have a right to be protected from the annoyance caused by said claim, and the sp-smodic efforts to assert it in the courts.

The cross complainants do not charge or allege that the claim of Chapman & Dewey amounts to a cloud on their title. They state that it does not amount to a cloud, but they also state that, as they are advised, it is their right to be protected against the frequent repetition of unfounded suits and against the annoyance that comes from the assertion of the unfounded claim of Chapman & Dewey and from the detriment of the suspicion that is thrown on their title in the minds of people who have no interest in investigating the true condition of the title.

Wherefore, these cross complainants pray the decree of this Court perpetually enjoining the defendants in this cross complaint, Chapman & Dewey, from further impleading these cross complainants, or

any one holding under them in any cause in which Chapman
132 & Dewey shall allege title to the lands here involved, or any part of them, and cross complainants pray for all other proper relief.

N. W. NORTON,
Solicitor for Defendants.

(Endorsed on back:) No. 315. Equity Chapman & Dewey Land Co. *vs.* Charles H. Bigelow, *et al.* Answer and Cross-Complaint. Filed July 21st, 1903. B. F. Cole, Clk. By W. W. Nelms, D. C.

133 In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN & DEWEY LAND CO., Plaintiff,
vs.
CHARLES H. BIGLOW, N. P. BIGLOW, L. T. WALKER, and F. H. HARTSHORN, Defendants.

Reply.

The plaintiff, Chapman & Dewey Land Company, for reply to the answer of defendants filed herein, denies each and every allegation of new matter in said answer contained, and asks relief according to the prayer of its complaint.

FRIERSON & FRIERSON &
ASHLEY, GILBERT & DUNN,
Solicitors for Plaintiff.

(Endorsed on back:) Chapman & Dewey Land Co. Plaintiff, *vs.* Charles H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn, Defendants. Reply. Filed Sept. 11" 1903. B. F. Cole, Clerk.

134 In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN & DEWEY LAND CO., Plaintiff,
vs.
CHARLES H. BIGLOW, N. P. BIGLOW, L. T. WALKER and F. H. HARTSHORN, Defendants.

Reply.

The plaintiff, Chapman & Dewey Land Company, for reply to the answer of defendants filed herein, denies each and every allegation of new matter in said answer contained, and asks relief according to the prayer of its complaint.

And for reply to the cross complaint of defendant-, plaintiff denies each and every allegation therein contained not hereinafter specifically admitted.

And for further reply to said cross complaint, plaintiff denies that defendants are the owners of the unsurveyed lands attempted to

be conveyed by the St. Francis Levee District to C. H. Bodkin in said cross complaint referred to.

Plaintiff denies that said lands were granted to the State of Arkansas by virtue of the Act of Congress of the United States, approved September 28, 1850, and known as the Swamp and Overflow Act, as in paragraph One of said cross complaint alleged.

Plaintiff admits that it was under said Act the duty of the Secretary of the Interior to make up an accurate list of lands passing under said Act and transmit the same to the Governor of Arkansas, but plaintiff denies that the Secretary of the Interior ever included the unsurveyed portions of said townships in the list of such Swamp and Over-flowed lands transmitted to the Governor and denies that the United States ever issued a patent to the said State of Arkansas for said unsurveyed portions of said townships 12, range 6 and 12, range 7, as Swamp lands passing under said Act of Congress.

135 Plaintiff denies that by the grant from the United States to the State of Arkansas of the surveyed lands in said townships the legal title to the unsurveyed portions of said townships passed to the State of Arkansas as Swamp lands under said Act of Congress, and plaintiff denies that the title to such unsurveyed portions remained in the State of Arkansas until the year 1893.

Plaintiff states that whatever rights the State of Arkansas acquired to the unsurveyed parts of said townships under and by virtue of the patents from the United States Government of the unsurveyed portions of said townships passed to said State as riparian owner of the surveyed lands, properly meandered on the permanent bodies of water covering at the date of said Act of Congress of September 28, 1850, and at the date of the surveys and plats made pursuant to said Acts, the unsurveyed portions of said townships now owned by plaintiff as in its complaint alleged, and that all the right, title and interest of said State in and to said unsurveyed portions of said townships as such riparian owner passed from said State to the grantees of the State in the patents conveying said surveyed lands from the State, and under and by virtue of those patents and the riparian rights thereto appertaining, and the mesne conveyance thereunder passed to and now belong- to the plaintiff.

Plaintiff admits that in the year 1893, the State of Arkansas by Act of the Legislature created the Board of Directors of the St. Francis Levee District, but plaintiff denies that by virtue of any provision of said Act of 1893, or by virtue of any Act of the Legislature of the State of Arkansas any title to the unsurveyed portions of said townships in controversy in this case passed to the said Board of Directors of St. Francis Levee District, such title having long before 1893 passed from the State of Arkansas to plaintiff's grantors, and by mesne conveyance to plaintiff as riparian owner by virtue of Patents from the State of Arkansas referred to in plaintiff's complaint.

136 For answer to the third paragraph of defendant's cross bill, plaintiff denies that the conveyance therein referred to conveyed any title to the lands in controversy to C. H. Bodkin, but that such conveyance simply constitutes a cloud on plaintiff's title as alleged in complaint, and the same allegation is true of subsequent

pretended conveyances referred to in paragraphs Four and Five of Defendant's cross bill.

Plaintiff admits that it heretofore brought a suit against one of defendant's grantors in Poinsett County, Arkansas, in regard to the title to these lands, which suit it afterwards dismissed without prejudice, the Board of Directors of St. Francis Levee District having prior to such dismissal brought a suit involving the Levee Board's claim of title to certain unsurveyed portions of township 12, range 7, in said Poinsett County, and such dismissal was for the purpose of avoiding a multiplicity of suits; that the said Levee Board having afterwards dismissed said suit, and failing now to prosecute its pretended claims to said unsurveyed lands and defendants herein having asserted claims of ownership in this plaintiff's lands involved in this suit, this plaintiff was compelled to bring this suit in order to quiet its title to such lands, and having fully replied, plaintiff prays relief according to the prayer of its complaint.

FRIERSON & FRIERSON &
ASHLEY, GILBERT & DUNN,
Solicitors for Plaintiff.

(Endorsed on back:) Chapman & Dewey Land Company *vs.* Charles H. Biglow *et al.* Reply amended. Filed Sept. 11" 1903. B. F. Cole, Clerk.

137 CHAPMAN & DEWEY LAND CO.
vs.
BIGLOW ET AL.

Offer of Depositions.

Plaintiff offers in evidence the deposition- of Peters, Davis & Varner taken in another case for the purpose of showing the present condition of the *locus in quo* in controversy, and not for the purpose of showing or as even tending to show by inference, the condition of the *locus in quo* at the date of United States Surveys and plats or at date of Swamp Land Grant, namely: Sept. 28, 1850, and therefore specially excepts from offer and moves to strike out volunteer statement of witness Peters from —— to —— beginning "I want to say further" to "did you find same," being volunteer statement of a mere opinion not responsive to any question, and incompetent, immaterial and irrelevant to any issue in this case and because it tends to contradict by volunteer oral expression of opinion the United States plats and surveys and the ruling of the Secretary of the Interior thereon.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

138 *Deposition of Geo. C. Peters.*

CHAPMAN & DEWEY LAND CO., Pl'ff,
vs.
C. H. BODKIN, Def't.

Deposition of George C. Peters for Plaintiff.

GEO. C. PETERS, on behalf of Pl'ff, being sworn deposes as follows:

(Questioned by Att'y HUGHES for Pl'ff:)

Q. Where do you reside, Mr. Peters?
A. Here in Jonesboro, Craighead County, Arkansas.
Q. How long have you lived here?
A. I came here in 1885.
Q. What is your business?
A. Well, I am a real estate man, and estimate timber, and look over lands.
Q. Did you assist T. L. Davis some months ago in the survey of certain unsurveyed lands around Hatchie Coon Island for Chapman & Dewey Land Company?
A. Yes sir.
Q. Do you remember the date when you went out there?
A. I can't remember exactly, sometime in November.
Q. About when was that survey made?
A. My recollection of it is that it was in November. I am not real positive about that.
Q. How was the water in the St. Francis River at that time?
A. I should say it was just a medium stage. It had rained quite a little bit just before we went down there, and had probably risen six inches or so from what it had been previous to that; But I should say that it was just about the medium stage. Not exceedingly low, nor exceedingly high.
Q. Where did you begin your investigation, your survey?
A. We commenced at the center of Sec. 23.
Q. Where did you go to?

139 A. We ran South two miles and then West one-half mile to the corner of Secs. 34 and 35, in Craighead County, in Twp. 13 N. R. 6 E. and in Secs. 2 and 3 in Twp. 12 N. R. 6 E. Then we went West one mile to the corner of 33 and 34, and 4 and 3 in Poinsett County; that is, 33 and 34 in Twp. 13 N. R. 6 E. and Secs. 4 and 3 in Twp. 12 N. R. 6 E.

Q. Where did you go then?
A. Then we went South about two and a half miles to the quarter line between 16 and 15, in Twp. 12 R. 6.
Q. Does that quarter line show on the government survey ?
A. It should be, yes sir; but the government survey didn't run that far down.
Q. You went to what would be the quarter line to 15 and 16, if all the land there now was surveyed?

A. Yes sir. The last fractional corner we left was between 4 and 5 in Twp. 13 R. 6. That was the last fractional government corner. This land lying South of that was what is termed unsurveyed land.

Q. Do you mean that all the land lying South of that corner is unsurveyed?

A. South of 3 and 4 in 12-6? No sir; I was trying to think of the number of chains from the S. W. corner of 4 and the S. W. corner of 3. I think it is about 20 chains, and some odd links, from the S. W. corner of 4 and the S. E. corner of 3, up to this fractional corner of the original survey of Hatchie Coon Island. The fractional corner is there; the old fractional corner we never found.

Q. Did you go west from the N. E. corner of 4?

A. Yes sir, about a quarter of a mile.

Q. How many chains did you run from there until you came to the meander line, from the N. E. Corner of 4, West to the Government Meander line, How far is it?

A. It is just a little less than a quarter of a mile.

Q. Then from that meander line to the edge of the water
140 as it stood when you were there; How far was it?

A. I should imagine about 600 feet.

Q. Was there any land at all beyond that line?

A. Do you mean beyond the 600 feet? No sir, there is what is called a black grove bar. I suppose there is about one acre on it; nothing but sand and willow.

Q. How far is it from the meander line to the edge of the water, going West from the meander line at the N. W. corner of fractional section 4? How far to the edge of the main channel of the river?

A. I expect nearly a quarter of a mile from there. Merely an open marsh and flags and an occasional bunch of willow. From that point, by going a little Northwest you would strike the river much quicker than by going straight along the line. The river takes a bend to the West. By going to the Northwest, it is not over a good shot-gun shot. There is a bend right there. But that, all that is beyond that is worthless land, no timber on it.

Q. Explain that map: What is meant by the colors and figures on it?

A. The red part indicates land.

Q. What does that white part with streaks of ink through it represent?

A. That represents the low, marshy land, and would be land probably now.

Q. What does the pencil mark across Hatchie Coon Island represent?

A. That represents the old government survey of the Island.

Q. Now, referring wholly to the land on Hatchie Coon Island; State what is the character of land with reference to its elevation, and what vegetation grows on it.

A. In Poinsett County: You take the old government meander line, and along that line it is a little low; and as you go up
141 on the island further you get on some higher land, that is North of the government line. Now the timber along that

lower line is small, and consists of cypress and small ash, and occasionally a small over-cup.

Q. Is there a slough or anything that runs across Hatchie Coon Island?

A. There is a slough that would leave at the intersection of 34, and would run Southeast and almost runs across the island there; but that slough is above the old meandering line.

Q. Does the old government meander line there correspond with any slough that is existent there?

A. I don't think you could call it any slough, no sir. But it is lower quite a good deal there. From the East there is a low section comes in this way (indicating) and from the West there is one the same way, and they almost meet in the center of the island.

Q. What slough is that called—The Gum Poinst slough?

A. No sir; the Gum Poinst Slough in high water separates Gum Poinst from the main part of the island. Gum Point is in section 4. But there is a slough comes right in North of that and cuts the island in two again; they float timber out of it there. Of course, along the low meandering line, when the water gets high it would reach probably nearly across the island.

Q. Referring to the unsurveyed land about Hatchie Coon Island. That is what I mean by asking you about the character of the lands—the unsurveyed land; what is the character of the vegetation, etc.?

A. Nearly all of it is low land.

Q. About how high above the ordinary stage of the water?

A. In an ordinary spring stage of water, a good deal of it under water.

Q. At the time you were there, about how high, on an average, was the land above the water?

A. I suppose from the Water's edge up to some two feet
142 or two and a half feet. There would be a gradual incline from the water's edge out.

Q. Describe the vegetation on the unsurveyed land.

A. Cottonwood and cypress and ash and over-cup; that is all the merchantable timber. There is a small undergrowth most all over it.

Q. What is the character of the undergrowth?

A. It is green briers, and some small switch cane, and blackberry; and then gum, also is timber that I didn't mention.

Q. What kind of vegetation did you find along the water's edge?

A. Elbow bush and willow and ash and cypress.

Q. What kind of weeds, if any?

A. Flags, smart weeds, and a moss that I wouldn't know really what to call it, except water moss.

Q. Is this land uniform as to height; or are there some high places on it? If so, where are they?

A. I suppose the highest point on the unsurveyed land would be section 10, running along the ridge or backbone, I think that runs N. W. and S. E.

Q. About how much of that high land is there?

A. I should just have to guess at that; about 800 acres, I guess.

Q. Has the river got a bank there? Which side of the island is the river on?

A. On the West side. It had on the West side, there, a well defined bank at that time that we were there. The main channel of the river had.

Q. Was that at the outer line shown as unsurveyed land, where the main channel was.

A. Well, at some places it comes almost in to the land; at other places half a mile from the land; but in either instance, from this red line here, it is all marsh, flags, smart-weed, mostly.

143 There are little pockets scattered through there.

Q. How long have you been acquainted with Hatchie Coon Island?

A. I think in 1892 was my first visit to Hatchie Coon Island, in a boat. I don't think there was a particle of land on it then.

Q. Was the Mississippi River water in there then?

A. Yes sir.

Q. What relation, if any, did you sustain to Mr. Beach, who once owned this land?

A. I have been his legal agent since 1892, I think.

Q. What do you mean by legal agent?

A. I had a power of attorney and would sell his lands.

Q. In the course of your duties as such agent, would you visit this land occasionally?

A. Yes sir, quite often during the overflow.

Q. Did you ever know of the island being wholly overflowed with water from the St. Francis?

A. Only that one year. I never knew it to be overflowed entirely by water from the St. Francis alone.

Q. About how much land did you find in section four, outside of the government survey?

A. As I remember it, we considered that there were about 320 acres in section 4. I don't remember just exactly the number of acres that the government gives in section 4 of the old original survey.

Q. How much did you find in section 3?

A. Sec. 3 has something like 500 acres in it in the old government survey.

Q. How much does it lack being full now. If the survey were extended would there be a full section of land there now?

A. Yes sir.

Q. How much land did you find in what would be Sec. 9 if a survey were extended so as to cover the land now there?

A. About 160 acres.

144 Q. Where did that lie?

A. It would lie North and South in a strip of land about a quarter of a mile wide on the East side of Sec. 9.

Q. In Sec. 10, how much did you find?

A. I should say about 560 acres were in Sec. 10.

Q. In Sec. 15, about how much land did you find?

A. According to the survey there, there would be about 160 acres;

but that is really low land. Along towards the line between 10 and 15, the land is moderately high; but as soon as you went below that, you went right into low land, although there is some quite good cottonwood and cypress on it.

Q. In Sec. 11, how much did you find?

A. In Sec. 11, as far as the West side of it is concerned, is all in what is called Hatchie Coon Island.

Q. How much land in there is fit for cultivation?

A. I don't think there is scarcely any; there may be a little bit of a point on the island that may touch 11 on the West side, but if it is it is very small. On the East side, there might be 20 acres right in the coutheast corner of it.

Q. What would be Sec. 1, if the government survey had covered all this land; How many acres of land did you find?

A. I expect about half a section.

Q. In 12, about how much?

A. 12 is nearly full.

—. In thirteen, how much?

A. Well, I should say that that would lack about 160 acres of being full.

Q. Taking the margin of this land, where it touches the water all around is the space between the line- you have marked on the plat there as the land as it is now, all alike clear out to the main channel?

A. No sir; from where this line marked for where the
145 land is now is, I should suppose there was 500 or 600 feet of small sypress, tupelo gum and small water ash, mixed with some flag; however, not much; and elbow bush; that lies right adjacent to the island all the way around it, that is covered with water, only when it gets very low. At the stage it is at present, it would be dry; but *any* any ordinary stage of summer water, the water gets back in there where I have just spoken of.

Q. That runs all the way around the island?

A. Yes sir.

Q. What is outside of that?

A. Flags, smart-weed and moss, and here and there a little bunch of willows, some larger and some smaller, and that extends out to the channel of the river.

Q. How wide is that strip; or is it of uniform width?

A. It is not uniform in width; simply follows the crooks of the river. That smart-weed there is so thick and so heavy that it will in some places bear your weight up. In other places you would go in up to your neck in it. I remember, four years ago, I think, I crossed the island: it seemed that there was some trouble about squatters, and I had to run the line across the lake to get at the corners; and in doing so I would find places in the smart-weed that it would bear us up, it was so thick and heavy; but you would feel it quiver and then you would fall through up to your neck into slimy mud.

Q. You say the main channel of the river runs on the West side?

A. Yes sir.

Q. What is the character of that water on the East side between Hatchie Coon Island and the main land?

A. It is most entirely small cypress and willow, some scattering small ash, flag and smart-weed.

Q. What kind of a body of water is it?

A. Well, in extremely high water, you can't get through
146 there very easily; but at present you could walk right across it, except that in some very large pockets you could probably find water. But in an ordinary stage of water, it is very nearly impossible to get any ordinary size skiff through there. There is one little run through there, and if you don't know it, you had better not try to get up through there. There is no navigation on that side, and a stranger couldn't run through it. The hunters who know it, with little dug-outs can get through there.

Q. Is it navigable for rafts?

A. Not on the upper end of the island, but on the lower end, a run called Lead Fork in there bearing to the East, don't go up the island; and in that run they float logs, and raft the logs when they get them in the St. Francis river.

Q. Is there room enough for a raft to get through there all made up, on that East side?

A. No sir. They did in 1892. I think, a Mr. Mangrum got some timber on the lower end of the island. The larger share came out on the West side of the island; but a small portion of it came out in single logs from the Lead Fork run and into the river; and then they rafted it in the river.

Q. What is the character of the water South of the island, is that one vast river there, or what is it?

A. It is composed of flags and willows and some little dornicks. That Truelock dornick is right south of the island. I suppose it has five or six acres in it. Bill Fenz has his club-house on that. Just S. E. of Truelock Dornick there is another with 25 or 30 acres in it, with some cottonwood. It seems that just immediately South of the island, there seems to be a little backbone in there that divides Lead Fork on the East and the main channel of the river on the West. It is some higher in there. With the exception of one or two runs between the dornicks, it seems to fill in that way a little more than it is on either side. I suppose the current was a
147 little stronger in Lead Fork and a little stronger in the river than right through the center.

Q. Are the sunk lands very wide below the island?

A. Yes sir, wider than any other part.

Q. How wide are they there?

A. I should say two and a half or three miles.

Q. Do they acquire greater width as you go South?

A. Yes sir, I expect the widest point is in Section 20; that is, in the tier of sections starting in section 20, runs across four miles right East and West.

Q. What is that part of the sunk lands called down there? Has that a distinctive name?

A. Yes sir, it is called the Big Water, for one.

Q. What is the territory in there called the Scatters, or is there such a place?

A. The Scatters is a point that is in section- 30 and 31, in Twp. 12 N. R. 7 E. The right hand Chute comes down through there, and part goes into St. Francis Lake, and part of it goes into Right Hand Chute proper; and Right Hand Chute proper runs into St. Francis River in Sec. 14, Twp. 11 N. R. 6 E. right above Marked Tree. But the Scatters is that portion of Sec-. 30 and 31 where in high water the Right Hand Chute seems to have filled up and water scatters out over it, and there is scarcely any channel in it at all.

Q. How wide is the channel of the river down there through that big body of water at the ordinary stage. How wide is the main channel at an ordinary stage, through that wide part?

A. That is all the way from 200 to 500 feet.

Q. How wide is the St. Francis River after it leaves the sunk lands?

A. It runs about 300 feet wide in some places. It is quite wide in some places, in some places, narrow. It is just about the average width of the St. Francis River generally speaking. You can
148 follow it twenty miles below there, but as soon as you get out of the sunk lands you come into a perfectly well defined channel; the timber comes right up on both sides.

Q. Is there any current outside the main channel in that wide place that you speak of?

A. Yes sir; there in Lead Fork on the East side of the sunk lands, there is quite a current over there; that current comes from the water that gets around on the upper or East side of Hatchie Coon Island. It divides up there and part of it goes into the main channel, and part of it goes in on the East side; and in a good big spring stage, there is a strong current on the East side of it.

Q. Outside of the main channel and Lead Fork, are there any other runs of any importance?

A. Yes sir, one called Stud-Horse Run, I believe; and Ash Camp Run, I believe, at the lower end of the lake.

Q. What are those runs?

A. They are portions of the sunk lands that are a little lower than the average, and make a very convenient place for trappers to get out and in at times when the water is not high enough for them to go anywhere they want to.

Q. What is the ordinary width of them?

A. They run all the way from 100 feet to down as low as 10 feet in some places—that is in certain stages of the water. In a good spring stage, you don't have to follow any run; you can go any where you want to. When the water gets down, you have to follow these runs.

(Att'y NORTON for D'f't:)

Q. A run, then, is a certain trip you can make in a boat, when the water is low?

A. Yes sir. Now, for instance, if you know that Ash Camp Run, if you know that, you can take a dug-out and get over into the Right Hand Chute without any trouble. If you didn't know it,

you would have to go down the St. Francis River until you
149 struck the Right Hand Chute, and then go up it. I want to say further, that on the East side of the land in 13 and 12 and 1 and in 6 and 7, in Twp. 12 N. R. 7 E. is what is called Old River; and that is what is a pretty good run. At the time that I was there, the water was just about waist deed in it, and it has always been my idea that when the government made their survey, they meandered Old River. The East bank of Old River coincides with the government meander line in Secs. 6 and 7, 18 and 19, in Twp. 12 N. R. 7 E.

Q. Does that state of affairs apply to 18 and 19, also?

A. Yes sir, a portion of it.

Q. What portion?

A. It comes right out there in 18 and 19 and goes right through it.

Q. Which does it come out in?

A. In both of them. Right in 18 and 19 there seems to be a pocket that runs away back up here like this (indicating) That Old River slough comes out into it.

Q. Did you find any unsurveyed lands on Secs. 18 and 19?

A. I think there are, yes sir. When we got down there, we had work to follow the Anthony survey. The water was probably a foot and a half higher than it was when he was in there. We would get into flag there and just couldn't shove the boat through. It was very hard work there to follow any line.

Q. How about the land in 35 and 36?

A. That is mostly low land, with the exception of some backbone ridges that have some cottonwood on them.

Q. Is it the same character of vegetation that there is around Hatchie Coon Island?

A. A little more of that elbow brush and small cypress than you find on the lower part of Hatchie Coon Island down here, showing that as you go South there, it is a little lower; right in there is what is called the Scatters, and that is where that Scatters—right
150 through there.

Q. In other respects is it similar to that?

A. Yes sir.

Cross-examination.

(Questioned by Att'y NORTON for D'f't.)

Q. How far is it from the government meander line—from secs. 7 and 6 and 18 and 19, in Twp. 12 N. R. 7 E. West to the St. Francis River?

A. It is in the neighborhood of four miles. The channel of the St. Francis River comes right in through Sec. 16 on the lower end of Hatchie Coon Island; and there is Sec. 15, 14, 13, and part of 18. That would be very near four miles.

Q. Now, that is four miles of what sort of surface?

A. Well, it is largely of flag, smart-weed, and small cypress, tu-

pelo gum, scarcely any of the red gum, or white gum; if there is it is very small.

Q. Over closer to the East side of Twp. 12 N. R. 6 E. you strike some high land?

A. Yes sir, on the West side of 7 and 6 in Twp. 12 N. R. 7 E. on the West side, is some high land.

Q. Just across the range line in Twp. 12 N. R. 6 E. aint there some more land?

A. Yes sir, there is some land there.

Q. Going directly west from 6 and 7.

A. That would be in sec. 1 and 12, in Twp. 12 N. R. 6 E. You will strike land there.

Q. But going further west, you would strike good land on the island, wouldn't you?

A. Going across Lead Fork, you would strike land on Hatchie Coon Island.

151 Q. So, then, in one shape and another, there is quite a lot of good high land between that meander line in Sec. 7 Twp. 12 N. R. 7 E., and the St. Francis River?

A. Yes sir, some quite good land in there.

Q. Now, according to the plat you are looking at, which is the exhibit to Mr. Davis' deposition, it indicates water about secs. 20 and 18 and 21?

A. Yes sir.

Q. Was that under water when you were there? If it was, was it open water? If not, what sort of timber grows around, and what would be there if the water was down?

A. That is a part of the country that I described to Mr. Hughes in saying that there was a little bit of a backbone through there, with little dornicks scattered around on it, On that, you find some cottonwood, some ash, tupelo gum, not much white gum, and elbow brush and willow and a mixture of everything. That is probably that has accumulated there in the last 50 years, I expect. It is a little higher through there than it is to the West or on either side of it. You remember what I said about that backbone; that is right in there.

Q. Tupelo gum how big, ordinary growth, collar-butted and all?

A. Well, it would run from 2 inches to 10, possibly some of it 12 inches. I am not talking about the swell, but mean the diameter you would taken when you got above the swell of the tupelo.

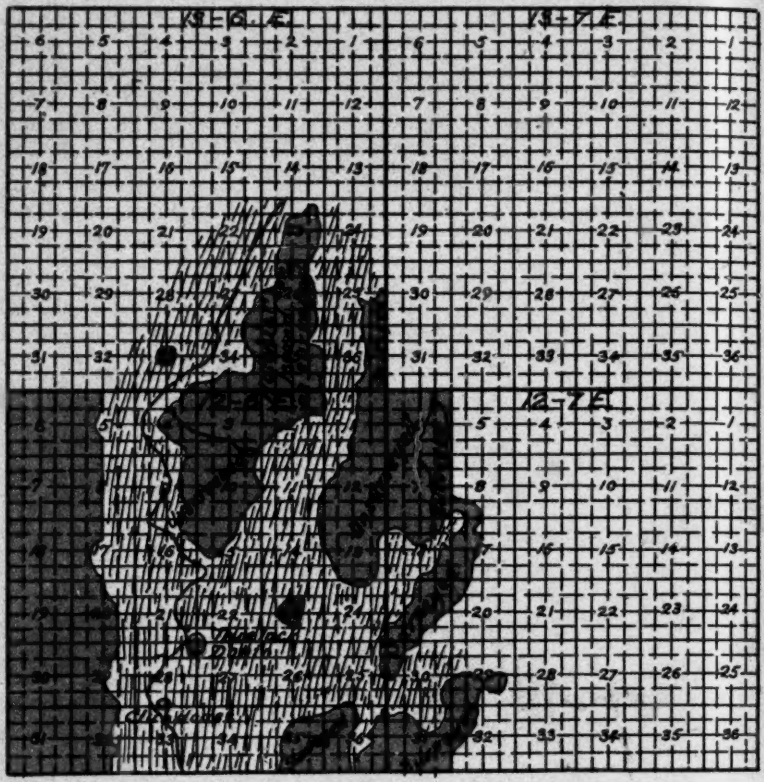
Q. Could you see Mr. Anthony's blazes through that part of it?

A. Yes sir, in this way; that is, if you would happen to strike a dornick with willow on it where he passed it, he blazed it; but across the big flag openings you had nothing to guid- you but the compass.

Q. Did you and Mr. Davis go through there wading, or in a boat?

A. Some places we waded; some places we waded and shoved the boat, and some places we boated; a little of all.

152 Q. Some places you had to follow the water, and some places the land?



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Bigelow et al.

A. Yes sir; we went very nearly straight. We pulled the boat over nearly everything, except one or two dornicks that we had to go around.

Q. Did you have a skiff, or a canoe?

A. We have a skiff, a very small one.

Q. 35 and 36 in Twp. 12 N. R. 6 E., are about how far from the St. Francis River?

A. Well, 35, I would imagine is about a mile and a half. You are talking about the land on 35, or of Section 35? Section 35 would be about a mile and a quarter from the channel of the river.

Q. Between 35 and the river, is there land? And of what character is it? Flag and smart-weed and water?

A. It is a mixture of almost everything that you can think of. There are some spots of land in there, and sloughs. That is where the Scatters on Right Hand Chute come in there, and right at the present time, I expect you could walk across there; but as soon as the water gets up to any sort of stage, you would have very hard work.

Q. Does the red marked portion of the plat you are testifying from show practically all the good land that there is in Twp. 12 N. R. 6 E.?

A. I expect very nearly; yes sir. You could go there now and find land there; but I am speaking now of any reasonable stage of water.

Q. One could go there now and find more land than is marked on that plat?

A. Yes sir. I suppose it would be called land now, but the larger part of the time it is under water. The water is extremely low in the river just now. It is as low as I ever saw it in my life.

153 (Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

(Here follows diagram marked p. 153*a*.)

154 *Deposition of T. L. Davis.*

In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN & DEWEY LAND CO., Pl'ff,
vs.
C. H. BODKIN, D'f't.

Deposition of T. L. Davis, for Pl'ff.

T. L. DAVIS, a witness on behalf of the plaintiff, first being duly sworn, deposed as follows:

(Questioned by Att'y ALLEN HUGHES for Pl'ff.)

Q. What is your occupation?
A. County Surveyor of Craighead County, Arkansas.
Q. How long have you been county surveyor?
A. Since the last election. This is my first term in this county. I was county surveyor of Poinsett County four years, two terms.
Q. How long have you been a surveyor?
A. I studied surveying in school, and then worked on the Kansas City Ft. Scott & Memphis Railroad; when that was built through the bottoms; I began running lines for that company in 1882 or 1883, I think. My first work was, I believe in 1882.
Q. Have you recently made a survey and inspection of certain lands on Hatchie Coon Island, in Township 12—6, adjacent lands in 12—7, for the Chapman & Dewey Land Co.?
A. Yes sir I was there last fall.
Q. When were you over there?
A. I was over last fall, I think. The exact date is in a book I have at home. I think it was early in November. We went all over Mr. Anthony's survey and checked it up, all over the island.
Q. Who was with you?
A. Mr. Peters, George Peters, and John Williams, one of the chairmen, and I can't think of the other fellow's name, Bob something.
Q. Did Mr. Peters go all the way with the survey?
A. Yes sir, he was the flagman, and the head manager. I have all the names of those with me, over at the house.

155 Q. Does that plat (indicating) show the line run by Mr. Anthony that you followed, and the old government survey?
A. Yes sir, that shows Mr. Anthony's lines all the way round. He checked his lines and blazed the trees all the way around, nicely.
Q. Do you make that plat an exhibit to your deposition?
A. Yes sir. The plat herewith filed, marked Exhibit "A" is made a part of this deposition.
Q. The land, marked red on that plat, indicates what?
A. That means Hatchie Coon Island, all along the government line, and some outside of the government lines.
Q. What line is this that marks the outside of the red tract?

A. That is the water's edge as it now shows, where we found it.

Q. Does that corr-spond with Mr. Anthony's survey? Is that the line that he made?

A. Yes sir, that checks up with him very nicely; we did so all the way around.

Q. What is the line marked in pencil across Hatchie Coon Island?

A. That shows where the government field notes are—it shows where the government survey ended. It is the government lines. We had the old government field notes.

Q. The line in pencil indicates the old government line?

A. Yes sir, it shows the boundary of the government survey—where they said the water's edge was.

Q. You may state what is the character of the land, as to elevation, etc., which now appears in section 4, outside of the old government line.

A. Well, that in section 4; there is a slough through it, and it is high nice land like on the East, not quite so high. It has some red oak, gum, small ash, and out near the water's edge you come to cypress pole and willow, and soft flags, and grass. We had to wade that slough in going through there.

156 Q. How wide is that land through there?

A. We went fifteen chains from the northwest fractional corner, and, I believe, about 750 feet further.

Q. Then the strip is 750 feet wide outside the government survey, is that what you mean?

A. (Examining plat.) No, it is seventeen hundred feet from the meander line, instead of 750 feet, from the government meander line. We found about 320 acres there in section four.

Q. What is the size of the timber?

A. From Thirty inches down to small cypress poles. The gum trees are the largest. Not very many oak trees. But along there is some mighty good red gum.

Q. What was the stage of the water when you were in there?

A. The river was bank full and way out; that is, I mean that it was out to the edge of the willows, that is, as far as the willows come out, and all the sloughs were full. We waded one slough there with hip boots and would get the boots full of water in that slough.

Q. Now, did that strip of land get wider as you go South from the point where you ran out to the water's edge. Does that strip of land widen, or does it get nearer to the government line?

A. It goes in a triangle; it goes west and southeast.

Q. Is Mr. Anthony's line about equi-distant from the government line at all points, or does it get further off from the government line?

A. It goes further off. His water edge line runs just like we did—his meandering line for the water. It leaves the old government survey further as you go South.

Q. What vegetation did you find on the land besides the trees you mention.

A. Cottonwood scattered all through the country.

Q. What undergrowth, if any?

157 A. Willows and flags.

Q. Were they on the strip of land, all the way back?

A. Oh, no; there was pretty good timber on the land; small cypress poles and willow on the edge, and then came small ash and some oak, and now and then a cottonwood tree.

Q. Is that land as high as the land inside the government meander line?

A. It slopes, kinf of, as you go towards the water's edge. There is a slough inside there, and when you leave the slough, you first go on a little backbone, and then go to the river; it slopes off then to the river.

Q. You have been surveying in this country since 1882 or 1883, you say?

A. Off and on I have done a lot of surveying in there. I have been in Poinsett County, and have been working in this county three or four years, some.

Q. During the time you have been surveying, has your business taken you often in the St. Francis bottoms?

A. Yes sir, every week, nearly; that is the biggest part of the surveying I have done—in the bottoms. There is where the timber is, and they want it surveyed.

Q. State whether or not there have been any changes in the elevation of the soil throughout the St. Francis bottom, within the last twenty years. Whether or not it is higher, or lower, than it was at that time?

A. There is sediment always forming; after every overflow there is sediment formed, and it is gradually rising up.

Q. On this country around Hatchie Coon Island, state whether there is a light, or a heavy growth of weeds around the edge of the water?

A. There is heavy flag and grass around the edge of the water.

Q. Did you find any smart weed there?

A. Yes sir.

Q. Is that a heavy growth, or a light growth?

158 A. Heavy. Everything grows rank in the bottoms; I mean by "Rank," heavy.

Q. You have spoken of section four; in what you have said, you have spoken of the land outside of the meander line in section four?

A. Yes sir, that is all you have asked me about.

Q. Well, now, passing from section four into section three, state whether or not the general characteristics of the land you have described as land in section four, are equally true of section three?

A. Yes sir, about the same kind of land.

Q. Does that run also to the water's edge?

A. Only there is more government land in section three; from section three, you go into section four, and then into section nine.

Q. Does section three run to the water's edge?

A. No sir, we didn't find it that way.

Q. You found no willows or flags on section three.

A. There is a slough in section three, but no willows or flags.

Q. What is the general direction of that slough.

A. It runs northeast and southwest; it crosses the section line.

It curves too. It comes by Gum Point like that (indicating on plat).

Q. Is that the only slough on section three?

A. No sir, there are smaller sloughs. That is the deed slough; we called it the Gum Point Slough; there are other little sloughs running into it, but that is the only slough of importance.

Q. What did you find in section nine?

A. In section nine, we found a strip of land on the East side of the section—that is, what would be section nine if it was surveyed—there is a strip of land nearly a quarter of a mile wide, on the East side of nine.

Q. Does it differ materially from the land in section four?

A. About the same; on the East side, you run into timber,
159 and on the west you run into flag. It is much like section four.

Q. What about section ten?

A. The section line between nine and ten is high ground; then way out on the East side, or East edge of ten, there is water.

Q. What kind of timber is there on section ten?

A. Oak, and gum, and some mulberry.

Q. Is Gum Point on section ten?

A. No sir, I think it is on section four.

Q. Is there any dornick or mound on section ten?

A. No, there is no dornick in ten. Truelock's dornick is below that.

Q. What about the lands in section fifteen and sixteen, or what would be those sections if surveyed?

A. There is some land in section sixteen; about forty acres, I reckon.

Q. State what is the character of it?

A. As you go further south it is lower. The willow extends further out; it is not as high as it was up in ten. The timber isn't as heavy down there.

Q. Do you know how much land there is in section nine outside of the government meander line?

A. About 160 acres.

Q. How much land in section ten outside of the government meander line?

A. In section ten, about 600 acres.

Q. How much in section three outside of the government meander line?

A. Section three is a full section.

Q. You found enough land to complete the fractional section then?

A. Yes, sir; no water in there.

Q. How much land is there in section sixteen?

160 A. About seventy acres, I think it was.

Q. How much in section fifteen.

A. About two hundred acres in section fifteen.

Q. Did you find any land in section two outside of the government meander line?

A. Yes sir, we found about 320 acres in section two.

Q. Your line doesn't show any?

A. There is 320 acres of the government land in section two; we didn't find any more land there—not any *made* land in section two. The government shows 320 acres. We didn't find any made land in section two.

Q. On which side of Hatchie Coon Island is the main channel of the St. Francis River?

A. On the West side.

Q. Is the larger current—the larger stream—over there? Is that larger than the stream on the East side?

A. Yes sir.

Q. Do you know which side of the island the boats use in navigation?

A. The west.

Q. What kind of boats are navigated on this stream?

A. Sometimes it is too dry to navigate at all; when they do run, the- run small steamers.

Q. Is the stream navigable for large steamers?

A. Not up there, no large ones.

Q. For what length of time during the year can the St. Francis River be navigated by even small boats at these points?

A. In the spring; It is owing to what kind of season it is. When they have a June Rising, they can run the boats away up into the spring. It depends entirely on the season. One year it will be dry in June, and another year it will be up. They can usually run in January, February and March, if they can run at all. March is usually the overflow month.

161 Q. What did you find in sections six and seven, in Township 12 North, range seven East?

A. We found on the East side of six and the East side of Seven two miles there of land.

Q. Did you follow the old government meander line?

A. Yes sir.

Q. Is there any land outside of the government meander line there?

A. Yes sir, on the East half of six and the East half of seven ther-'s a strip of land there outside of the government meander line.

Q. Is there a slough or bayou to correspond with the old government meander line along there?

A. Yes sir.

Q. What is the depth of that slough?

A. When we were there, it was over our boots; we had a skiff, and we would push that along, and sometimes paddle in it, and sometimes walk and then we would get our feet wet, the water being over our boots.

Q. How wide is it?

A. Some places 300 feet; from 200 to 1000 feet mide *2;*

— What kind of vegetation is in it?

A. Some big cypress trees, and cottonwood, and willows.

Q. How big are the cypress trees?

A. The cypress trees along the west are from twelve to twenty inches—small poles up to twenty inches.

Q. You crossed the slough, I believe. Now after you crossed it, what did you find after you crossed the slough; on the West?

A. Yes sir; the government line shows the land on the East side of sections six and seven, in Township twelve North Range seven east.

Q. Is there in fact any land on the West of their line?

A. Yes sir, good land.

Q. How much?

162 A. Nearly a half section in section six.

Q. Would sections six and seven be full, if the lines were now carried to the sunk lands, where they now run?

A. Yes sir.

Q. Would it include any other lands, if so, what?

A. Well, sections six and seven are full now, but the government survey don't show it; and you would go away over to the middle of section 1 in township 12 North, range 6 East, before you found the river.

Q. Would any other sections be there if the survey was filled out?

A. The east half of section one, in township twelve North, range six East, would be all full; that shows in the government plats as all water. And nearly all of section twelve, Twp. 12 N. R. 6 E.,—the section right south of section one—that's all land, nearly. And section thirteen, in 12—6, would be nearly a full section; a little fraction on the southwest corner and the southeast corner, that reaches water.

Q. How high is the land outside of sections six and seven—in what would be sections one and thirteen?

A. There is cottonwood, ash, and cypress and tupelo gum growing on it.

Q. How does the height of it compare with the land on Hatchie Coon Island?

A. Not quite so high, I believe, as it is on Gum Point, where we camped at first. There is more cottonwood over there too.

Cross-examination.

(By Att'y NORTON for Defendant:)

Q. I understand you to say the pencil line running substantially northeast and southwest through section two, in Twp. 12 N. R. 6 E. into the lower part of section three; then turning North of West through three into section four, is intended to represent the meander line made by the Government. Is that right?

163 A. There are two pencil marks there; this represents the government line (indicating on the plat).

Q. Doesn't that meander line follow a substantial slough?

A. No sir.

Q. Isn't it substantially along a slough there, that runs in the same direction?

A. No sir; the Gum Point slough comes right in this way (indicating on plat); and you cross the slough and North of Gum Point slough is fine land. You find a cane ridge up there.

Q. Did you follow the meander line made by the government, through sections two, three, four, in twp. 12 N. R. 6 E.?

A. We had the government notes, and did the best we could. We didn't find any fractional government corner there. We found Mr. Anthony's survey, and checked up very nicely on it; I don't remember that we found any of the old government figures except on the old County Line there. I can get you the block of the old sweet-gum there with the government figures on it, no- (indicating).

Q. According to your map which you exhibit, does the government meander line run along the water's edge in going through section two?

A. On the East side it does, but not on the West. There is no meander line on that to the West.

Q. And didn't you find a slough substantially following that line as it goes through sections three and four, along through here?

A. Yes sir, there is a slough that comes in there (indicating — plat) That is the Gum Point Slough that I spoke of. We waded that.

Q. Now, to go from here in to Township twelve North, range, seven East. Is not there a slough at substantially the same place where the meander line made by the government is, through sections seven, six, eighteen.

A. Yes sir, a small slough; not as large as that on the West side. For that matter, there is a good many sloughs all through there.

164 Q. When you speak of Hatchie Coon Island, what sections do you mean to include in it?

A. That is marked in there. The parts in two that there is land in. And sections three and four and ten, where we found was unsurveyed; that is high and good land; part of the East half of section nine, and a fraction in the northwest of sec. fifteen, and a fraction in the northeast of sixteen. All of that is in twp. 12 N. R. 6 E. Then some more of it extends up into twp. 13 N. R. 6 East.

Q. You say you found some high land in section ten and nine?

A. Yes sir.

Q. What was the growth of timber?

A. Gum, cottonwood, tupelo gum, some cypress.

Q. What was the size of the gum and oak?

A. Small oak, 12 or 14 inches in diameter.

Q. How is the gum?

A. From twenty inches down. In the lower places are tupelo gum, and there are ash and cypress.

Q. Is the land in section ten higher, or lower, than it is in section four?

A. Lower; as you go to the lower end of the island, its gets lower.

Q. Is the land higher in four than it is in ten?

A. In the center it is. The unsurveyed lands average about the same all along the island.

Q. Did you know that country generally along in there a good many years ago?

A. I collected taxes for Poinsett County, and I knew then, having been county surveyor for the county, that there was land in there that taxes were not being paid on. I had run the lines for Beach, and waded the water through there.

Q. Was it on the tax books?

A. No sir.

Q. How long have you known that country—twenty five
165 years?

A. I went to Poinsett in 1889, and went to surveying in Poinsett in 1890, and was surveyor four years; and then was elected sheriff and was sheriff for eight years, and collected taxes and surveyed, etc.

Q. How far back does it take you?

A. Twelve or fifteen years.

Q. That is as long as you have known it?

A. I have known of it before that.

Q. You said something about pushing a skiff, and I understood you to be then speaking of sections six and seven; I would like for you to show me on your exhibit, where it was that you pushed the skiff.

A. I suppose in there (indicating) We waded through, and sent Bob somebody around with a skiff; on the East side of section 14, Twp. 12 N. R. 6 East.

Q. Now you have said something about the East Channel and the West Channel of the river; where do you mean to say that the East Channel of the river is?

A. There is a lake over here way over on the East side of Hatchie Coon Island; on the East side there is a lake. The main channel of the St. Francis River is all on the West side; there is no channel on the East side; the right hand route.

Q. On the East side there is a lake that you refer to when you say the East Channel?

A. There is a lake there. I may have said so. If I said anything about any east channel. There is a lake there.

Q. If you would start from the Northeast corner of Twp. 12 N. R. 6 East,and go West, you would come to some water soon?

A. Yes sir, you would come to a lake.

Q. That is the lake that you have just been speaking about?

A. Yes sir.

Q. In your direct testimony you refer to something about 1700;
do you mean that that was the distance West from the north-
166 west fractional corner of Sec. 4 to the St. Francis River.

A. No sir; that is fifteen chains. We went that, and then found it was about 1700 feet further before we got to the river.

Q. Now, I will see if I understand you. You mean, from the government meander line, on the West side of the fractional sec. 4, T. 12 N. R. 6 E. where it crosses the township line, the government gives you fifteen chains to the river; but as a matter of fact, you went the fifteen chains, and seventeen hundred feet further before you got to the river?

A. Yes sir, we went 1700 feet further, through small cypress and tupelo and willow.

Q. Well, now, was the 1700 feet the distance from the meander line to the river, or was it 1700 feet in addition to the fifteen chains?

A. It is seventeen hundred feet in addition to the fifteen chains. We went one mile there, and then went fifteen chains further, and then measured 1700 feet further.

(Att'y HUGHES for Pl'ff:)

Q. Where did that fifteen chains put you?

A. To the meander line of the Government; we went on then across the land before we got to the water.

(Att'y NORTON for D'f't:)

Q. So the fifteen chains you speak of is between the meander line and the Northeast corner of Sec. 4?

A. Yes sir.

Q. And west of that fifteen chains, it is 1700 feet to the river?

A. Yes sir, to the water's edge.

Q. Through little cypress and such stuff as that?

A. Yes sir, and some cane; there is a cane ridge there.

Q. Now, to go up the township line on the East side of Twp. 12 Range 6, do you come in contact with sloughs and water, or is it all high land?

167 A. There are some little flat places with sloughs; but it is generally high land—that is, high land for a flat country—it would be low land out here.

Q. Good growth of timber.

A. Yes sir.

Q. Sweet gum?

A. Yes sir.

Q. Sassafras?

A. No sir, I didn't see any; there may be some.

Q. What is the size of the Gum?

A. Twenty-three or four inches down; some oak timber of a size big enough to make ties out of, small oaks; cottonwood, cypress, small cypress is all through the country; and some ash; and some oak big enough to make staves.

Q. According to your plat, does the red portion mean land, and the white part with pen marks across it, water?

A. Yes sir.

Q. It indicates then that there is no land in Sec. 21, none in 22, none in 24, just a little in 23, none in 26, none in 27, none in 33, none in 34, very little in 11, none on the East side of 8, and none on the West side of 9; is that right?

A. That plat shows it just as near as we could get at it; where the red is land, and where the white is, is water all through that.

Q. Did you go over the sections Mr. Anthony made out?

A. Yes sir, we traced his line.

Q. Following the section lines?

A. Yes sir, I believe every one of them; we checked them up very nicely.

Q. And found no land in 22?

A. I believe there is a dornick there called Truelock Dornick, in 22.

Q. Is all the rest of that section water?

168 A. I believe it is.

Q. Is all 21 water?

A. That Truelock dornick goes into 21 a little bit.

Q. Is all of 28 water?

A. There are two little dornicks in 28, I believe.

Q. Had he blazed out the lines through there?

A. He hadn't blazed any lines in the water. No sir; he hadn't through the river; he had on the road, and had put the angles down and estimated it, and cut the figures in the trees.

Q. How long did you work in there?

A. Twelve day-, I believe.

Q. You think you followed all of Mr. Anthony's section lines?

A. We followed them as far as we went, as far as we wanted to; he might have gone on into Mississippi County, I don't know.

Q. I mean through 26, 27, 21, 22, etc.?

A. The river is there; the water, over our heads, I suppose *I suppose*. We could not go into that deep water. I think we did just about like he did; when *he* got to the deep water, over our heads, we would go back.

Q. Then your map of Twp. 12 Range 6 as you have made it, shows all the 1 and that is in it, marked red; and shows the water in it by the uncolored portion that has pen strips across it?

A. Yes sir, that is the way we found it, and the way we understood it on the grounds.

Q. When you went in there to do that surveying, for whom did you do it?

A. For Chapman & Dewey Lumber Co. I believe.

Q. Who did the talking to you about it?

A. Mr. Will Chapman went down with us on the train. We got off at Mosher, and he went on. George Peters went with me.

Q. Who gave you instructions about what they wanted done? Who told you what to do and how much to do?

A. Mr. Will Chapman said to survey out the island and

169 to check up the lines established, and said he would send Peters along to help. Peters had the field notes and the plats. He was working for Chapman & Dewey too I suppose. I had all my notes that I had when I was Poinsett County Surveyor, and a little Poinsett County map that I had made, that helped some.

Redirect examination.

(Questioned by Att'y HUGHES for P'l'ff:)

Q. The land that your map shows in sections 18, 19, 30, 31, 29 and 32, in Twp. Twelve (12) N. R. seven (7) East; Does that differ materially from the character of the other land you have described

as bordering on the sunk lands? What is the character of all that land?

A. It is cottonwood—and low swampy land—But it is dirt, you can walk on it.

Q. Is it higher, or lower, than that above?

A. It is lower. That on the lower end of Hatchie Coon Island, is about like it; but up here on the Island, it is higher. There is some heavy cypress scattered around. There are no heavy brakes of cottonwood. There is some gum.

Q. What is the largest size of the trees?

A. From 36 inches down. The 36 inch trees are the cypress; they are the largest. Now and then you will find a big cotton-wood, as big as a cypress. The sweet gum is next in size.

Q. Is that larger, or smaller, than that on the island?

A. There is some scattering big heavy cypress down there—the largest trees there.

Q. Is the same true of the land in 25, 35 and 36?

A. There are about the same down there; yes sir. Scattering big cypress, and some little brakes.

Q. How big are those little islands, or dornicks that your map shows?

A. That Truelock Dornick—I forget—I guess it is about 30 or 40 acres; I don't remember.

170 Q. How much in section 23?

A. That is the club house (indicating on the map).

Q. What is this in 23.

A. There is a little dornick in there, about, I don't remember what size it is. We have it painted there a good size, on the map.

Q. Does the plat show about the relative sizes of those islands?

—. —.

Q. You speak of Gum Point Slough on Hatchie Coon Island; what is the direction of that slough?

A. It goes around in a curve like that (indicating). It goes Southwest and then goes into the river.

Q. About where does it start?

A. In section 4—about the N. W. of sec. 4, if I remember exactly.

Q. And does it, or does it not, cross the Government meander line?

A. Yes sir, it does: The meander line don't run with the slough; the slough runs in a sort of rainbow; curves about like that (indicating).

Recross-examination.

(Questioned by Att'y NORTON for D'f't:)

Q. To what extent now does all this land that you have been testifying about, overflow?

A. Well, it takes big water to get over the middle part of Hatchie Coon Island—right in here (indicating).

Q. Wouldn't it all overflow, practically, with high water in the St. Francis, without any Mississippi River water in very high water?

A. It is according to what stage of water you would call very wet. It takes the Mississippi to get the St. Francis up over the country.

171 Q. Do you know whether or not it went under in 1897?

A. I don't think the middle of that went under in 1897.

Q. Well, now, you found water in there when you were surveying?

A. Yes sir.

Q. That is a pretty flat country, isn't it?

A. Yes sir, low land.

Q. Take the river bank—it is right on the bank of the river—how much bank is it?

A. You wouldn't find much bank. It is a deposit of sand and a gradual slope, with flags, etc. The river is there about a mile wide.

Q. Do you (know) whether or not there is but little rise and fall in that part of the St. Francis River?

A. Yes sir, there is not any bank like there is down further; we call it the Sunk Lands. It spreads over the country.

Q. Then when the St. Francis River begins to fill up, it spreads over a great deal of country?

A. Yes sir.

Q. And that is the reason there is very little rise and fall there?

A. It seems so, yes sir.

Q. How much is that land you have painted on the lower end of Hatchie Coon Island, higher than the level of that you waded?

A. I waded to my waist sometimes, to see if I could find where Mr. Anthony had been.

Q. How high was the land above the level of the water?

A. Two feet, or something like that.

Q. Then three feet more of water would put the land under?

A. It might be higher, we didn't take the elevation. It varies. Right here (indicating) it is not very high, but on the island there it is oak-timbered, and higher. It would take pretty good water to get over some of the island. In the low part—where the Government meanders were—that would be pretty low.

172 Q. Take section 10 Twp. 12 N. R. 6 E. then, how much would you say that was above the level of the water that you waded around there?

A. Out in sec. 10 there is a big dornick; there are some big mounds fourteen feet high; we jumped up turkeys there.

Q. Take the general level of that section 10?

A. In 3 and 10 some mounds come right along there.

Q. It is no more than three or four feet above the level of the water, is it?

A. At certain times of the year, it is. When we were in there it seems to me that four of five feet higher was about the level there; and as you came out towards the lake, it was a little lower. I didn't have the level, and did not take the elevation.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

173 *Deposition of F. H. Varner.*

CHAPMAN & DEWEY LAND CO., P'l'ff,
vs.
C. H. BODKIN, D'f't.

Deposition of F. H. Varner for the Plaintiff.

F. H. VARNER, a witness on behalf of the plaintiff, first being sworn, deposes as follows:—

(Questioned by Att'y HUGHES, for P'l'f:)

Q. F. H. Varner is your name, is it not?
A. Yes sir.
Q. Where do you reside; where is your home?
A. On Buffalo Island, near Lake City, in Craighead County.
Q. Which side of the St. Francis River do you live on?
A. On the East side.
Q. Do you remember the section numbers of your home place?
A My home place is on Sec. 7, Twp. 13 N. R. 7 E.
Q. What is your occupation?
A. I run a cotton gin, and am a farmer.
Q. How long have you lived over there?
A. Ever since 1844. My father moved there in 1844. I was quite a little kid then. In October, 1844.
Q. And you have lived there continuously ever since?
A. Yes sir.
Q. Have you ever been engaged in boating on the St. Francis River?
A. Yes sir, a little.
Q. What boats did you ever run on there?
A. The steamer Ike; Old man Ike Mangrum owned it at that time.
Q. How long ago was that?
A. That has been six years ago.
Q. Did you have a steamer before that?
A. The May Avey. We rebuilt her again and named her, Ike.
Q. When did you first begin in the boating business over there?
174 A. It has been about ten years ago; I don't remember the year, of course.
Q. I am asking for approximate answer. Have you been familiar with the land known as Hatchie Coon Island since you resided there?
A. Well, I have been on it a right smart, and have been over it, and all through Hatchie Coon Lake, with a canoe; and all around the lake I used to trap and hun- *and hunt* a great deal when I was a boy.
Q. You may state whether or not the land all around Hatchie Coon Island is higher than it was when you first knew it?
A. Well, around the borders the edges of course the smart weeds and grass is filling up. The best I remember about that, is that

where I used to go in my canoe in hunting and trapping, now you can't go at all. I don't know how much it has filled up; I ain't able to say. I haven't paid any attention about that.

Q. That condition of affairs is general in that locality, is it not?

A. Yes sir; there is great beds of smart-weed along the edge, and that rotting up and filling up with sediment, causes filling up every year. That is filling up *fast*, too.

Q. You can't say how much it has filled up, nor how far it has extended?

A. No sir.

Q. You don't know exactly the location of the government lines?

A. No sir, I don't know the exact location of the government lines.

Cross-examination.

(Questioned by Att'y NORTON for D'f't:)

Q. Is that a muddy stream when it is up—the St. Francis?

A. Yes sir, tolerably muddy. I can't say a muddy stream; when the Lake is up high, it is tolerably muddy.

175 Q. When the Mississippi River comes in there, it don't get muddy?

A. Yes sir. And when it rains very hard and runs off the hills in there it gets muddy, I suppose; I don't know.

Q. That smart weed doesn't grow enough to cut much figure, does it?

A. Yes sir; I should think it *to*; It grows powerfully bad.

Q. How high does it get?

A. I can't tell. I have heard folks say that they have seen stems over fifty feet long. It grows right up; I have walked over lots of it when there would be water all under me. There are also flags in there. I have been walking on it and could hear the water splash under me.

Q. Was there some dirt in it?

A. Yes sir, all along in it. The roots go to the bottom though, and don't float on top.

Q. Do you think that smart weed has grown there that way so rank every year, and for so many years, that it raises the ground?

A. It makes and fills up; I don't suppose it raises, but it fills up. I know that in places where I used to go in a canoe, I couldn't go now in any stage of the water.

Q. When you used to go in there, wasn't it when the Mississippi was in there?

A. Oh, no, sir.

Q. Doesn't that lake in there wash any?

A. No sir, very little. It is all filling up where that growth of smart weeds and grass is. It washes very little.

Q. Not much current in it?

A. No sir; sometimes there would be sand bars on the main channel that would move and fill up some places, and other places not. But in the outspread, it don't.

Q. The East side of Hatchie Coon Island is in the spreads.
176 A. Yes sir.

Q. The river don't go on the East side of Hatchie Coon Island?

A. No sir; the river runs on the West side of Hatchie Coon Island. Now, in this case a man named George Clemens would be one of the best witnesses you could get on this. He has trapped there all his life, all over Hatchie Coon Island.

Q. Is there any other sort of vegetation beside the smart weed?

A. Flag. If you know anything about flag, it grows for miles sometimes just solid, as high as your head, every year. I should suppose that would do a great deal of filling up.

Q. Does flag die there every year?

A. Yes sir, and comes up anew every year.

Q. It is like the smart weed?

A. Yes sir, it dies like the smart-weed. And that smart-weed is taking the lake, and finally will take it.

Q. Just that growth of weed?

A. Yes sir, that growth of weed and flag.

Q. In the course of time, you think there will be enough from just the flag and smart-weed to take the lake?

A. Yes sir.

Q. And force the river into its channel?

A. Yes sir, I do.

Q. What is a pretty high bank for that river in there. The banks are low along the river?

A. It is all low. There ain't much bank about it. It is just the top of the ground.

Q. From the bottom of the river to the top of the ground ain't much?

A. No sir, not much.

Q. How much does the lake rise and fall?

A. Two or three feet. Three feet is a big rise. Now the lake is mighty dry now, and this time it will be more than that.
177 When that lake comes up, it just spreads all about.

Q. When the low ground around in there has water on it, a couple of feet more would put it over most of the land?

A. Yes sir, when all the low grounds are under water, a couple of feet more would put the most of it under, only the higher ground.

Q. I believe you say you don't know the section lines around in there?

A. No sir.

Agreement.

It is agreed that either party in this case may read in evidence the original records of Poinsett County, to show any conveyance or instrument described in their pleading, instead of exhibiting the original instruments; and that the persons described as the heirs of Moses S. Beach in the conveyance from the heirs of Moses S. Beach to William B. Beach, are all the heirs of Moses S. Beach, and that he died intestate.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

178 *Letter E. A. Hitchcock, Secretary.*

E. F. B.

2460-1902. NOVEMBER 17, 1902.

The Commissioner of the General Land Office.

SIR: The Department is in receipt of your letter of June 2, 1902, relative to an alleged trespass upon what you term the unsurveyed lands in the northeastern part of Arkansas, known as the "sunk lands of the New Madrid earthquake."

The alleged trespassers are persons who claim to have purchased said lands from the board of directors of the "St. Francis Levee District," created and organized by the act of the legislature of Arkansas of February 15, 1893, which fixed the boundaries of said district and empowered and made it the duty of said board to levy annually a tax on all lands in said levee district, to be assessed according to the increased value of betterment estimated to accrue from protection against floods from the Mississippi river by reason of the construction of levees. At the same session the legislature of the State passed an act (March 29, 1893), donating to said district, for the purpose of building and maintaining levees, all the lands of the State lying within said district, except the sixteenth section, and all right, title or interest that the State had or might acquire to any lands within said district, except the sixteenth section, during the five years immediately after said act, by reason of forfeiture for taxes.

A special agent of your office states in his report that in an interview with the officers of said board he learned that it claimed title to the lands in question under said act of March 29, 1893, and also bases its claim upon letters from your office and from the Secretary of the Interior, declaring, in effect, that if the unsurveyed lands, known as the "Sunk Lands," were at the date of the town-
179 ship surveys, covered by bodies of water and were afterwards uncovered by the recession of the waters such lands would belong to the owners of the adjacent lands as riparian properties, and the United States would have no authority to survey and dispose of them, assuming that the lands contiguous to and surrounding the meandered waters have been disposed of. The special agent expresses the opinion that there is no doubt that at the time of the township surveys these lands were simply covered by the overflow of the Mississippi river, and that they must be classed as agricultural lands, and not as covered by permanent bodies of water and therefore subject to State or riparian ownership; that "some of these lands are five miles wide and are covered with the finest timber, which is exceedingly valuable, and when cleared will make fine cotton and corn plantations and become some of the most valuable ones in the State." You recommend that steps be taken to enjoin the St. Francis Levee Board from disposing of any of said lands and that the purchaser of the lands from said board be enjoined from cutting any timber thereon.

The lands in question are in township 11 to 16 N., inclusives, in range 6 E., and in township 12 to 17 N., inclusive, in range 7 E., which were surveyed at different times from 1841 to 1849. The field notes and the plats of those surveys show that what are now reported to be unsurveyed lands were at the date of the township surveys covered by permanent bodies of water that were meandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 to 15 feet. A large portion of the surveyed lands lying along the meander lines are designated in the field notes as overflowed and unfit for cultivation.

The letter of your office and the letter of the Secretary of the Interior, referred to by the special agent as a basis of the claim of the levee board, were written in response to a communication from the chief engineer of the St. Francis Levee District, of June
180 25, 1894, to the Secretary of the Interior, in which, referring to the fact that the unsurveyed part of said townships consisted of lakes and swamps, he says:

The numerous overflows since then have filled up these lakes and swamps very much, and changed largely the general features of the country. To such an extent has this filling up been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water. This filling up increases the possibility of drainage, and recent cross sections of that basin show that the whole can be drained into the St. Francis and Little Rivers.

He stated that he was informed that the title to th*ese* unsurveyed lands yet remains in the government, and as the drainage of the lakes in the St. Francis basin is necessary to the maintenance of the levees, he suggested that the lands be donated to the State or the levee board for the purposes stated.

Said letter having been referred to you office, it was stated in response thereto, by letter of August 25, 1894, that "when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain and beds of inland nonnavigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States, but to the riparian owners." The Department, by letter of November 20, 1894, concurred in the views of your office and stated that from the facts then appearing the government had no jurisdiction over said lands and no power to direct their survey.

It appears from a communication by the chief engineer of the St. Francis Levee District, dated September 3, 1901, set forth in your letter, that this matter was brought to the attention of the Depart-
ment in 1894, with a view to having the lands surveyed and
181 disposed of by the government if it still holds the title. The purpose of the board was to have the title of the government divested, if it had any, so that the lands might pass into private ownership in order that they may be subject to the tax for their proportion of the cost in constructing levees. He says:

If the General Government has no jurisdiction of these unsurveyed

lands and does not claim any, and if a survey of them cannot therefore be made by the government, then it is the purpose of our Board to have them surveyed and sell them or quit-claim them and place them on our levee tax books, so that they may be taxed for levee purposes and therefore pay their proportion towards the construction of the levees and drains by which they have been and are being so greatly improved and benefitted. If the General Government will survey them so that we can tax them when parties buy them from the Government or homestead them, then our purpose will be equally accomplished.

It is not questioned that the portions of said townships, which are represented on the plats or survey as bodies of water are now valuable lands. On the contrary, the chief engineer states that he knows of his own personal knowledge that farms of great value are now cultivated in the very bottom or lowest places of some of these unsurveyed lands, but adds: "All of this conversion of these low lands is of course due to our levees keeping the overflow out of the low lands, and our drainage system which affords them drainage."

It may be mentioned in this connection that by the agreement between the United States and the State of Arkansas, entered into February 23, 1895, and ratified by the Act of April 29, 1898 (30 Stat., 367), the State of Arkansas relinquished to the United States all claim to the swamp lands in said State, except such as had been patented, approved or confirmed to the State at the date of said agreement, but said act of April 29, 1898, confirmed the title of all persons who had purchased from the State any unconfirmed swamp land and had received a deed for the same. As these lands had
182 not been patented, approved, or confirmed to the State and had not been sold by the State to any person, except perhaps one tract which it is alleged had been sold prior to said agreement, the "St. Francis Levee District" can not sustain its claim to said lands under the swamp land grant, and unless the title of the government has been otherwise divested, or its right to said lands was concluded by the approval of the township surveys and the disposal of the adjacent lands, the action of the St. Francis Levee District in disposing of said lands is without warrant or authority and steps should be taken to enjoin it from disposing of the same and its purchasers should be enjoined from cutting the timber thereon.

Therefore the conditions existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depredations on these lands. The returns of the township surveys show upon their face that what are now alleged to be unsurveyed portions of said townships were then actually bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or any of the papers submitted therewith, to impeach those returns as to the physical conditions of land and water at that time.

The opinion expressed by the Secretary of the Interior in his letter of November 30, 1894, herein referred to, was based upon the decision of the supreme court in the case of Hardin *v.* Jordan (140 U. S. 371), assuming that there was no mistake in the surveys and that

the lands contiguous to the meandered line had been disposed of. In the case of Hardin *v.* Jordan the doctrine was clearly announced that the right and title of a grantee from the United States of public lands bordering on non-navigable lakes and ponds, extends to the center of the lake or pond if the government has not reserved any right or interest that might pass by the grant or done any act showing an intention to make such reservation. The rights of riparian proprietors are controlled by the respective laws of the States,
183 but that does not effect the question as to whether the general government is, by disposing of the public lands bordering on non-navigable lakes and ponds, properly meandered, concluded from afterwards exercising jurisdiction over said lands and from disposing of the same. Upon this question the court said:

It has never been held that the lands under water, in front of such grants, are reserved to the United States, or that they can be afterwards granted out to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render title uncertain, and to derogate from the value of natural boundaries, like streams and bodies of waters.

While the United States does not, by the approval of the survey, and the disposal of lands contiguous to the meandered line, part with its title to lands that were erroneously omitted from survey, yet, as stated in the decision of the court in Hardin *v.* Jordan, *supra*, there should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian lands. It appears upon the face of the township plats of survey, and from the field notes thereof, that the lands in question were at the dates of the survey covered by bodies of water, which were properly meandered as such, and it does not appear from the report of the special agent that he has any evidence at hand to support his opinion that said lands at the time of survey were simply covered by overflow from the Mississippi river, nor is there anything shown by your letter or by the papers submitted therewith that tends to impeach the returns of the township surveys.

More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the Department in 1894, when the request of the St.
184 Francis Levee District to have said lands surveyed was refused.

The action of the board of directors of the St. Francis Levee District in exercising control over said lands appears to have been prompted by the disclaimer of jurisdiction and authority over them by the government, as expressed in the letters of your office and of the Department, above referred to, and such disclaimer was based upon the information furnished by the records of your office, which show that the authority and jurisdiction of the government over said lands was terminated by the approval of the surveys and the sale of the lands along the meander lines. It does not appear from

anything in the record whether the body of water that once covered the lands in question was navigable or not, but the result would be the same in either case. If it was a non-navigable body of water the riparian right vested by the sale of the lands along the meander lines by the government. If it was a navigable body of water the title of the bed thereof passed out of the United States upon the admission of the State to the Union, and was thereafter subject to the laws of the State. The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the government over the lands in question having thus terminated, the action of the Department of November 30, 1894, is adhered to, and no further or other action will be taken with reference to said lands.

The papers are herewith returned.

Very respectfully, E. A. HITCHCOCK, *Secretary.*

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

185 *Note.*

MAY 30TH, 1849.

The water is at a medium stage at this time and it is utterly impossible to get to that part of the South Boundary of Sec. 36 T. 13 N. R. 6 E. which was run by Mr. James M. Danley. The Hatchie Coon Sunk Lands on the West side of which I closed the Meanders in Sec. 2 T. 12 N. R. 6 E. is so deep at this time that it cannot be waded. The East Boundaries of Secs. 24 and 25 T. 12 N. R. 6 E. I passed in December 1848 in a canoe, there was water then on them from 8 to 10 feet deep and no timber except groups of Willow and small Cypress trees such as grow in the main Sunk Lands of the St Francis river. Mr. Samuel Johnson it seems established Corners in this Lake as it is called on the North side of the right hand Chute of Little River, which right hand Chute is very similar to the ground through which the lines Viz. East boundary of Secs. 24 and 25 T. 12 N. R. 6 E. runs. I have stated this much in order to show the utter impossibility of running lines or Meanders from any corners on the above named Boundaries only at the dryest season of the year. The part of the ground through which East Boundary of Secs. 24 and 25 lies is called Cutoff Lake and the South Boundary of Section 36 T. 13 N. R. 6 E. could not be reached by Mr. Samuel Johnson who run the East Boundary of T. 12 N. R. 6 E. at the time he run said boundary.

JOHN W. GARRETSON,
Deputy Surveyor.

186 STATE OF ARKANSAS:

Office of Commissioner of State Lands.

LITTLE ROCK, ARK., *Sept. 2nd,* 1903.

I, F. E. Conway Commissioner of State Lands for the State of Arkansas hereby certify that the annexed and foregoing transcript of a portion of the Original Field Notes of T. 12 N. R. 6 E. is a true and correct copy of said Field Notes on file in this office in so far as relates to the Note above copied.

In testimony whereof I have hereunto set my hand and official seal this 2nd day of September 1903.

[SEAL.]

F. E. CONWAY,
Commissioner of State Lands,
By C. B. MYERS,
Deputy Commissioner.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

187 CHAPMAN & DEWEY LAND CO.
vs.
BIGELOW ET AL.

Objections to Defendant's Depositions.

Plaintiff objects to the deposition of John M. Biggs, Charles S. Odom and James Anthony, if offered for the purpose, and in so far as they attempt, by inference or otherwise, to impeach or contradict the official plats and field notes of surveys made under the general direction of the General Land Office of the United States, or to attack the finality or correctness of the ruling of the Secretary of the Interior to the effect that the unsurveyed lands in controversy were at the date of the Swamp Land Grant covered by a permanent body of water and that the surveyed fractional sections and parts of sections owned by Plaintiff were in such surveys and plats properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purpose in this case because Secretary of the Interior has not only not failed or refused, but -as actually officially passed on such question of fact, especially as no one of said witnesses claims to have known anything about the *locus in quo* earlier than 1878, and such oral testimony of conditions existing since 1878 is incompetent, immaterial and irrelevant for the purpose of attempting to show condition of *locus in quo* September 28, 1850.

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(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

189 *Deposition of John M. Biggs.*

In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN-DEWEY LAND COMPANY, Plaintiffs,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER, and F. H. HARTSHORN, Defendants.

The depositions of John M. Biggs, Charles S. Odom and James Anthony, witnesses for the defendants, taken in the City of Memphis Tennessee on the 28 day of August, 1903, before Robert B. Goodwin, Notary Public present, counsel for plaintiff and defendants. Taken by consent, all formalities being waived but the right being reserved to except at the hearing for irrelevancy, incompetency and immateriality. Depositions when taken to be read in evidence in behalf of defendants at the hearing of the above styled cause.

Said witness JOHN M. BIGGS being duly sworn, testified as follows:

Direct examination by Mr. NORTON:

Q. 1. Please state your name, age, residence and occupation.
A. John M. Biggs, age 36, Marked Tree, Arkansas, work in timber, also a hunter and trapper.

Q. 2. Mr. Biggs, are you familiar with the lands known as "Sunk Lands" in Township 12, N. Range 6 East in Poinsett County, Arkansas?

A. Yes sir.

Q. 3. How long have you been familiar with that township?

A. Since 1888.

Q. 4. In how many different ways have you had opportunities to be familiar with it?

A. Just gone over it; I hunt over it and trap over it.

Q. 5. Did you ever go over it in any other way, or help anybody do anything?

A. Yes sir, helped survey it.

190 Q. 6. Who did you help and when?

A. Helped Mr. Odom.

Q. 7. When was that?

A. Just a few days ago, I forget the date.

Q. 8. Were you with Mr. Anthony when he laid off the sections in the middle of the township out there?

A. Not on that side of the township.

Q. 9. Do you mean not on that side of the river?

A. Yes sir.

Q. 10. You were with Mr. Anthony West of the river in that survey?

A. Yes sir.

Q. 11. When you say you helped to run the lines out East of the river, what line do you mean?

A. The meander line, and I refer to the recent work I have just alluded to with Mr. Odom.

Q. 12. Was any one else along with you and Mr. Odom?

A. No sir.

Q. 13. He engaged you to go along with him, is that it?

A. Yes sir.

Q. 14. Now, I will ask you where you and Mr. Odom went. You can look at this plat to see where you commenced, what you did and where you quit.

A. Commenced at the North line of Township 12, N. Range 6 East.

Q. 15. At what point on that line?

A. Right here at the place where the meander line intersects the township line. By meander line I mean the meander line by the United States surveyors as shown by the plat.

Q. 16. Well now, what did you and Mr. Odom do from that starting point?

A. We went in a South-east direction through section 4 and into section 3. We then followed the meander line in a North-east direction through section 2 till we intersected the township line.

191 Q. 17. Well now, what character of land was on your right hand what on your left hand?

A. Cottonwood and cypress on the right hand and Oak and Gum on the left.

Q. 18. Any growth besides cottonwood?

A. Cypress on the right.

Q. 19. In following along that meander line did you find any evidence of the government survey?

A. Yes sir.

Q. —. Say what you found.

A. Old government crossings.

Q. 20. Along that line was there any water on either hand?

A. Yes, there was some in section 4 on the right.

Q. 21. At what point where you found water how far is it from the St. Francis river?

A. Fifty chains.

Q. 22. Any high ground between that and the river at that point?

A. Yes, there is some.

Q. 23. With reference to the high land on the right and left as you proceeded around the meander line, how was that?

A. It is the lowest on the right.

Q. 24. About how much the lowest would you say?

A. It is considerable lower.

Q. 25. Estimate it in feet?

A. It is a foot or more lower.

Q. 26. How far from this meander line is that low land a foot or more lower?

A. From one hundred to two hundred yards, some runs to the meander line.

Q. 27. Then as you follow the meander line through these three sections you find low ground on your right?

A. Yes sir.

192 Q. 28. From two hundred yards up to and touching it in places?

A. Yes sir.

Q. 29. I will ask you if water is at times in that low ground on the right?

A. Yes sir, pretty near all the way, all through the winter and spring it stands there.

Q. 30. After you get away from that muddy low ground how is it four or five hundred yards in that direction on the right?

A. Swampy, it gets lower all the time going towards the river.

Q. 31. What is the growth out there where you term it swampy and lower?

A. Cypress most of it.

Q. 32. Any sort of vegetation?

A. Yes sir, flags and smart weeds.

Q. 33. Now to go back to the intersection of the meander line in section 2 with the township line, what did you and Mr. Odom do after you reached that point?

A. We went East on the township line until we reached the government meander line running North and South at the North-West corner of fractional section 6 in Township 12, North, Range 7 East. We found the government corner I mentioned.

Q. 34. Now, please say what you and Mr. Odom did from that point?

A. We followed this line through section 6 Southwardly.

Q. 35. Say how far you went along that meander line and through what sections?

A. Through 6, 7, 18 & 19 to the point where the meander line running Southwesterly intersects the West line of Section 19.

Q. 36. In going South through there Mr. Biggs, what was the nature of the ground on the right hand and on the left?

A. High ground on my left, but on the right there is a slough.

Q. 37. What was the growth of the timber on the right and on the left?

193 A. Oak on the left, cottonwood and cypress on the right.

Q. 38. What is the depth of that slough, and what character of bank has it?

A. Not much bank, just slopes out. It has smart weeds and flags and some growth of cypress.

Q. 39. Was there any water in it?

A. Yes sir, water in it now.

Q. 40. What portion of the way as you went along South to that point mentioned in 19 was there water?

A. On the right as I went South there was water.

Q. 41. Now my question was, how much of that slough had water in it?

A. All got water in it. At some places the water don't extend out to the meander line, but its got water in it all the way down. It is close to the line, runs all the way from one hundred to two hundred yards from the line.

Q. 42. How far is it across that water?

A. It is all the way from three hundred yards to a quarter of a mile.

Q. 43. You are speaking now of the condition it was in during the present month along that line that you run with Mr. Odom?

A. Yes sir.

Q. 44. No- Mr. Biggs, from that meander line that you followed out through sections 6, 7, 18 & 19 what is the distance West-ardly to the St. Francis River?

A. It is about three miles and a half.

Q. 45. What is the nature of the country, now, between that meander line and the St. Francis river, that three miles of country?

A. It is swampy, got ponds in it, flag and small growth of Cypress.

Q. 46. Any Willows?

A. Yes sir.

194 Q. 47. Smart wee-?

A. Smart weed, yes sir.

Q. 48. Any old dead cypress stumps and trunks?

A. Yes sir, flag openings in it too, openings with flag in it, openings that ain't no timber at all.

Q. 49. Was that as far as you and Mr. Odom went around the lands involved in this law suit?

A. Yes sir.

Q. 50. You did nothing further after you intersected the township line in section 19?

A. No sir.

Q. 51. Are you familiar with the lands, say in sections 27 & 28 and 34, 35 & 36?

A. Yes sir.

Q. 52. In 12 North, Range 6 East?

A. Yes sir.

Q. 53. Are you testifying now with the plat of that land marked exhibit "A" before you?

A. Yes sir.

Agreement of counsel made in presence of Notary.

The plat now referred to as exhibit "A" is admitted for the purpose of illustrating testimony without any evidence as to who made it, or any admission for counsel for plaintiff as to its correctness.

Q. 54. The sections about which I have just asked you appear on that plat do they?

A. Yes sir.

Q. 55. What is the character of timber on these sections?

A. There is sotton-wood, some gum and cypress.

Q. 56. Any oak?

A. Some oak, not much.

Q. 57. What size of the trees, taking oak trees and cotton-wood?

195 A. Not very large, from twenty to twenty-four inches oak, cotton-wood larger, thirty inches up.

Q. 58. I have had no purpose in confining you to certain sections, so please tell me anything you can of the nature of the timber on the whole land between the meander line and the section line?

A. There is a slough running through 35, 26, 23, 14 and 12 and 1.

Q. 59. How wide is that slough?

A. All the way from a quarter of a mile wide to three quarters.

Q. 60. Any growth of flags in it at any place?

A. Yes sir, flag in it in places, got water in it now from one foot deep to three or four feet.

Q. 61. Then take it on either side of that slough what is the nature of that country now?

A. Flag on the edge of it and small cypress timber on both sides of it up and down.

Q. 62. Could you walk around in it?

A. Yes sir.

Q. 63. Dry enough for you to get around in it?

A. Yes sir at the edges, or you can go through it if it ain't very miry. It ain't very miry at no time.

Q. 64. Take it now at the present time could a man with a pair of gum boots walk from the St. Francis river to the meander line?

A. No, not without getting over them.

Q. 65. Could he walk a good part of the way?

A. Yes sir, most of the way.

Q. 66. He would likely come to something he could not cross without getting over his boots?

A. Yes sir.

Q. 67. Assuming that a man had started to walk across there what would he meet with in the way of timber, vegetation and water?

196 A. He would go through cotton-wood and cypress, through flag and smart weed and water.

Q. 67. What water would he meet with?

A. Meet water as he comes up through Lead Fork chute.

No. 68. Have you referred to that chute before in your testimony?

A. No sir, I have not.

Q. 69. What section is it in?

A. It is 15, runs through 14 & 15, and 11 into 12, and there is another chute that drains that land to it, runs out through 27 & 22 and into 23 it drains that into St. Francis river.

Q. 70. How wide is that chute?

A. It is about one hundred feet wide, just runs down, it is awful swift.

Q. 71. Have any of these sloughs well defined banks?

A. Yes sir, just part of the way the bank is out, not all time. Do you want its name?

Q. 72. Yes, if its got a name.

A. Stud Horse.

Q. 73. Mr. Biggs, are there any places in that territory that we have been talking about where there is an ore like substance on the soil?

A. Yes sir, all over pretty near everywhere on the land, in the sloughs and even on the high land you can find it.

Q. 74. What appearance has it?

A. It looks a good deal like stone-coal.

Q. 75. When you meet with that what size places is it on?

A. It is all over the land in pieces from as big as a pound to five pounds.

Q. 76. How frequently do you meet with it?

A. You find it all over the land any time, in the sand-blows you find it more than anywhere else.

Q. 77. Has that substance been there ever since you have known that country?

197 A. Yes sir.

Q. 78. Well now, explain in your deposition what it is that people call sand-blows?

A. It is places where the sand is sunk and blowed out; the sand in the cracks, and the ground sunk. They call it sand-blows. You can find the old cracks in the land where it sunk. The people all term the sand places, sand-blows.

Q. 80. Now, I will ask you Mr. Biggs for an estimate from you of what per cent. of the land betwen the meander lines on the East side and the St. Francis river at present has water on it?

A. Well, at present in August about one-third of it has got water on it.

Q. 81. Well, of that third that has water on it how much of that water would have cypress trees and willows in it?

A. Not very much of it. Most of that he- it around the edges, but it would not have it in the water. Around the edges in the water there is some trees but not trees all over. One third of it that has got water on it, it has got vegetation in it, such as smart weeds, flags, and swampy like.

Cross-examination by Mr. ASHLEY:

Q. 1. This unsurveyed region between Hatchie Coon Island on the north and the Government meander line between 6, 7, & 18 on the east and the Government meander line in 35 and 6 on the south is what is known as St. Francis lake?

A. Yes sir.

Q. 2. Now you have known that territory since 1888?

A. Known it since '85, but been on it constantly since 1888.

Q. 3. Now, August is one of the very dryest months in the year isn't it?

A. Yes, sir, at that time. Some years of course it goes lower than it is now, but August is every year a low time.

Q. 4. Now, since you have known that land it is true isn't it Mr. Biggs that it has been gradually filling up a little in this
198 region.

A. I don't think it has. I don't think that land has filled up any at all.

Q. 5. Doesn't this smart weed die down and tend to build it up?

A. Yes, and it washes out, the sloughs run through it.

Q. 6. Does all the vegetation that forms there wash out?

A. No, the flag don't.

Q. 7. Isn't Hatchie Coon Island larger in area, greatly increasing in to this water that you say is on the left since you have known it?

A. No, I don't think it has.

Q. 8. Not very much at all events?

A. No, sir, it hasn't increased. It is all, in the spring and winter, it is all covered in water from this meander line down, in the winter and spring.

Q. 9. But in August only about a third of it is covered in water?

A. Yes, generally speaking.

Q. 10. Is this August about an average August on water?

A. Yes, just about.

Q. 11. At whose request Mr. Biggs, did you go down and run these meander lines as you say?

A. Mr. Odom's.

Q. 12. And who paid you for your time and work?

A. He did.

Q. 13. Do you remember what time in August you went there, can you give the date?

A. It has just been lately.

Q. 14. How long did you spend over there Mr. Biggs, how long a time?

A. Four days, I believe.

Q. 15. Four days?

A. Yes, sir.

Q. 16. Did I understand you to say there was oak and gum in here east of this meander line in sections 6 & 7 in 12–7?

A. Yes sir.

Q. 17. And cotton wood and some cypress on the left looking north of the meander line in 6 & 7?

A. Yes, sir, cotton-wood and cypress.

Q. 18. Some smart weed in there?

A. Yes, sir, there is where the slough lies some smart
199 weed and some flag.

Q. 19. Did you notice oak down there in 36?

A. Yes, sir, some oak.

Q. 20. Did you notice any oak down on the south end of 36?

A. No.

Q. 21. Did not?

A. No.

Q. 22. Is it your information that that plat about correctly shows the St. Francis river, that is the east line of it, about as far as it goes?

A. Yes, sir, that is a good map of the St. Francis river.

Q. 23. You said that the ground toward the St. Francis river south and east of the Government meander line to which you have referred in sections 4 & 3, 12–6, was a good bit lower than the ground north and east on what is called Hatchie Coon Island?

A. Yes, sir.

Q. 24. Is not the ground south and west of that Government meander line more than a foot lower in many places?

A. Yes, sir, a foot, and lower as I said.

Q. 25. Now, you said it was about, as I recollect you, fifty chains from this intersection of the Government meander line with the township and county line over to the St. Francis river, is about fifty chains?

A. Yes, sir.

Q. 26. Did you measure that?

A. Stepped it off, it is just about that.

Q. 27. Of course the amount of water in this unsurveyed region known as the St. Francis lake depends entirely upon the season of the year that you go there?

A. Yes, sir.

Q. 28. There is perhaps half of the year that it would be covered with water?

A. Yes, sir, winter and spring it is covered with water.

Q. 29. Have you ever been over the meander line, the Government meander line through 18 straight across to the right
200 bank of the St. Francis river on foot?

A. Yes I have been through there.

Q. 30. Been through there this August?

A. No, I wasn't through there this August, but I have crossed it, through it last July a year ago.

Q. 31. You say you have been a trapper and hunter around there?

A. Yes sir.

Q. 32. What is called Hatchie Coon Island is very much larger in area than what is shown on the government survey line at the present time, isn't it Mr. Biggs?

A. No sir, you have got to go to what they term Gum Point that is right here where Mr. Odom and I commenced on the County line North 12 6 East.

Q. 33. Isn't it extended in this direction a considerable distance?

A. Well, it runs down.

Q. 34. A great deal further than the government meander line?

A. Yes, but they term that point Hatchie Coon Island.

Q. 35. Well I mean the high ground extends down considerably further now?

A. Well there is some high ground in there, a little, yes it don't go down very much further than that.

Q. 36. How long does this smart weed grow? How tall?

A. It don't grow very tall, just on top of the water.

Q. 37. Don't it have its roots in the bottom?

A. Yes sir, it just sets on top of the water and floats.

Q. 38. Don't it form such a thick bed in places you can walk over it?

A. In some places, yes.

Q. 39. Then you testified that whole business goes out.

A. Yes sir when the water comes.

Q. 40. Roots and all?

A. Yes it tears it down and washes it away.

201 Q. 41. Goes down St. Francis river?

A. Yes, a flood passes. It grows in the summer time and when the water rises in the spring it washes it out.

Q. 42. You mean to say every season there all the smart weed that has grown up there goes out the St. Francis river?

A. Yes sir, washes down those chutes, a good portion of it.

Q. 43. Is it a good portion of it or all of it?

A. I wouldn't say all of it goes, it drifts and catches.

Q. 44. What becomes of the flag in the water, does that go out too?

A. No, I never said it did.

Q. 45. What becomes of that?

A. It dies there.

Q. 46. Does that have any tendency to raise the level of the ground gradually from year to year?

A. Well I don't think it does. I have been there a long time and I don't think it has raised it any since I have been there.

And further deponent saith not.

By consent of counsel for both parties complainant and defendant the signature of deponent was waived, the witness having been duly sworn according to law.

Sworn to and signature waived in my presence, this the 28 day of August, 1903.

[SEAL.] ROBT. B. GOODWIN,
Notary Public.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, clerk.

202 *Deposition of Charles S. Odom.*

CHARLES S. ODOM, witness for the defendants, being first duly sworn deposed as follows:

Direct examination by Mr. NORTON:

Q. 1. Please give your name, age, residence and occupation.

A. Thirty seven years, Charles S. Odom, Memphis, Tennessee, Surveyor.

Q. 2. Has that been your occupation for some time?

A. Two years.

Q. 3. Did you hear Mr. John M. Biggs testify?

A. Yes sir, I did.

Q. 4. Are you the Mr. Odom he said *he* was with him in looking at the meander lines.

A. Yes sir.

Q. 5. You employed Mr. Biggs to go with you?

A. Yes sir.

Q. 6. In whose employ were you?

A. James Anthony & Company.

Q. 7. That company represents the defendant here in Memphis does it, Bigelow & Company?

A. Yes sir, I suppose the Company does, James Anthony does.

Q. 8. At whose instance did you go and make that inspection?

A. James Anthony's.

Q. 9. Do you know the dates you and Mr. Biggs were in there?

A. August the 18th.

Q. 10. This year?

A. Yes sir.

Q. 11. Now I will ask you to use the map that Mr. Biggs had in giving his testimony, and tell us where you went?

A. The corner we first found was the North-East fractional corner of section 2, 12-6. We went west along the township line to the Northwest fractional corner of 4, 12-6, according to the government survey, and then followed this meander line South-West just
203 a little distance; thence Southeasterly with the meander line through 4 & 3; thence Northeasterly through section 2 to the township line and county line.

Q. 12. In going along that meander line what was the nature of the ground as to height on the right?

A. The ground on the right was a little lower than the ground on the left. The land on the North-East was a little higher than the land on the South-West.

Q. 13. As you turn to the North-East through section 2 what was the nature of the land on either hand?

A. Land on the right was a little lower than the land on the left.

Q. 14. Is that low land on the right the nature of the land for some distance to the South, or was it simply a low channel-like formation?

A. It is low as far as I went.

Q. 14. If there is any difference in the timber on the right from that on the left say what it is?

A. There is gum and cotton-wood on the right and some oak on the left, also some cypress on the right.

Q. 16. Did you follow any other meander line, you and Mr. Biggs?

A. Followed meander line South through 6, 7, 18 & 19, township 12 range 7.

Q. 17. In going south along this meander line say what was the nature of the country on the right and on the left.

A. There waa a good deal of water on the right, found some gum and cotton-wood, cypress, a little oak, some oak on the left, and a few trees of cotton-wood on the left going South.

Q. 18. Going to the right of the meander line you would get in the water, suppose to the left what would you meet with?

A. Meet with some water for a short distance.

Q. 19. Whereabouts?

204 A. On the left of the meander line as well as on the right going south through 6 & 7.

Q. 20. Well after you would get out of that slough on the left going South what would be the nature of the land in 6 & 7?

A. I didn't go very far out there, just most to the edge of the water, but I found right sharp oak in there.

Q. 21. Then following the meander line South through 6 & 7 you find water right through the line do you?

A. Yes sir.

Q. 22. A slough of water?

A. Yes sir.

Q. 23. Well when you got down into 18 how was that water with reference to the line?

A. Well, there was water on the right there and a little bit on the left.

Q. 24. How is it in 19?

A. Some near the North line of 19 and some more near the South-West corner.

Q. 25. Then following the whole meander line through 6, 7, 18 & 19 you follow water most of the way?

A. Yes sir.

Q. 26. With some of it on either side of the line?

A. Yes sir.

Q. 27. Was the water continuous all the way down?
A. It was continuous, more or less.
Q. 28. Mr. Odom are you familiar with that land between the meander line and the St. Francis river?
A. No sir, not on the East side of the river.

Cross-examination by Mr. ASHLEY:

Q. 1. You never had been there before, I suppose until this August, where these lands are?
205 A. Yes sir, I have been up here, (pointing to the North township line of 12-6).

And further deponent saith not.

C. S. ODOM.

Sworn to and subscribed before me, this the 1st day of September, 1903.

ROBERT B. GOODWIN,
Notary Public.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

206 An the said JAMES ANTHONY being duly sworn, deposes as follows:

Deposition of Jas. Anthony.

Direct examination by Mr. NORTON:

Q. 1. Please give your name, age, residence and occupation.
A. James Anthony, Memphis, Tennessee, fifty-four, civil engineer.
Q. 2. How long has this been your business Mr. Anthony?
A. Since 1866.
Q. 3. Is that a profession which you studied, if so, where, when and how much?
A. I studied it in Germany and in Sweden. I graduated in 1866.
Q. 4. From which of these institutions?
A. Stuttgart.
Q. 5. You mean your practice of this profession has been continuous since 1866 or not?
A. Yes sir.
Q. 6. Do you know the lands involved in this law suit, Mr. Anthony?
A. Yes sir.
Q. 7. Have you any connection with the defendants in this case?
A. Yes sir.
Q. 8. Please say in what way, with reference to these lands I mean?
A. With reference to these identical lands I have no connection.
Q. 9. Connected with them in business matters but not with reference to these lands?

A. Not with reference to these lands.

Q. 10. Did you employ Mr. Odom to investigate the meander line and character of land it runs through?

A. Yes sir.

Q. 11. For whom did you do that?

A. For Bigelow Brothers.

207 Q. 12. In testifying, Mr. Biggs has used a plat, also it has been referred to by Mr. Odom, and I will show it to you and ask you if you know who made it?

A. The plat is correct, it was made in this office and filed for record.

Q. 13. Do you mean that this is an original or a copy of the one which is filed?

A. This is a copy of what is filed for record in Poinsett County. The subdivision is what is called "The unsurveyed land intersections," as shown by this plat.

Q. 14. Can you say when it was subdivided into sections, and by whom?

A. It was subdivided by myself and under my direction in 1900, September and October, I think.

Q. 15. Treating these lands, now, that are involved in this law suit as a whole, I will ask you what is the character of the timber on them and what land has got water, to the extent that timber won't grow, and speak of the different localities where there is a difference.

A. Well, timber grows all over the land.

Q. 16. What character of timber?

A. Cypress and cottonwood on the outskirts of that land, both on the river and on the meander line. The center of the land in section- 10, 15, West half of 11, West half of 14 is the highest land in that country, comparing it with both sides of the river and it is known as "Gum Island" and the timber on these lands, this 10, 15, West half of 11 and West half of 14 are oak, some cottonwood, red gum, mulberry, some hickory, and is also covered with a dense undergrowth of spice-wood.

Q. 17. Well, between these lands that you say are known as "Gum Island" and the land within the meander line, known as "Hatchie Coon" what is the character of the country?

208 A. The country is low, swampy in some places, going as wide as a thousand and twelve hundred feet between high land and high land, and narrowing down in places to seventy-five and one hundred feet wide.

Q. 18. Have you ever followed the meander line through 4 & 3 & 2 about which Mr. Biggs and Mr. Odom testified?

A. Yes sir I made those meander lines.

Q. 19. I will ask you to give us the difference, if there is any difference, in the timber and land on one side of that line and on the other?

A. The timber on the Hatchie Coon property is oak and gum, and on the South in between the two islands, cypress principally and some little cottonwood.

Q. 20. How long have you known that country Mr. Anthony?

A. Since 1874.

Q. 21. It is known as the "Sunk Lands" is it?

A. Yes sir.

Q. 22. Do you know whether it is possible at times to walk across that country?

A. Oh yes.

Q. 23. I wish you would see now from the map, and designate it by sections where it can be crossed, that is if it can be crossed at some places or not at all.

A. Well, the best crossing is through 6, 12, 11, 10 and through 9. There is an old wagon road that goes through there, and there used to be a ferry.

Q. 24. When you said 6 in your last answer you mean section 6 in 12-7?

A. Yes sir.

Q. 25. South of this crossing you have mentioned give us an idea of the nature of the country with reference to the possibility of being crossed.

209 A. On foot you mean.

Q. 26. Yes, by team or horses and wagon or by foot.

A. Well, what you call by foot, you mean across this country anywheres, as far as wagons are concerned you would have to leave these middle sections out, and then you could cross through 35, 34 & 33 with wagon or otherwise.

Q. 27. I wish you would name the sections approximately where it could not be crossed on foot.

A. The south half of 24, and the South half of 22.

Q. 28. There would be too much water on those places?

A. By wading you can cross anywhere. There is water in section 23. There may be a little flag in 14. The flag openings commence in North-East corner of 2, they go down through section 2 to the East half of section 11. The East half of 14 and from the South line of section 14 they turn due West running out between sections 14, & 23 and 15 & 22, and is here known as the Lead Fork slough.

Q. 29. In 23 and 26 now, if there is anything there take it up.

A. In section 26 there is what is known as the "Scatters." That is more or less over the section there is bunches of timber possibly covering twenty-five or thirty acres and these bunches of timber are surrounding by flag openings.

Q. 30. Would there by any of that in 25 & 35?

A. There may be a little in 25, but very little, 25 is pretty high ground, it is ash and oak. 25 is known as "Ash Camp."

Q. 31. I will ask you to give the nature of the country on either hand going South with the government meander line through sections 6, 7, 18 & 19 until it intersects the township line between Ranges 6 & 7.

A. The meander line through sections 6, 7, 18 & 19 on down until the meander line intersects the "Scatters" follows the old steam-boat channel known as the "Old River" channel. Long years ago the Old River channel was opened and navigable for boats, and
210 during the fall of 1876 was used as a clearer and better channel than the main St. Francis. The St. Francis river

channel from the upper end of Hatchie Coon Island, or Deep Landing, during the fall of that year was so covered and filled up with sunken logs that it was impracticable to use the main channel of the St. Francis river during that distance.

Q. 32. What were you engaged in in there in 1876?

A. I was engaged in there as surveyor. I was at that time county surveyor of Mississippi county, and was engaged in selecting four hundred thousand acres of timber land for the Dundee Land & Timber Company in Edinburg, Scotland.

Q. 33. To your own knowledge did steamboats run up what you call the "Old River" channel in 1876?

A. Yes, such steamboats as they had. They were flat bottom boats and propelled by steam.

Q. 34. Mr. Anthony, I ask you the course taken by what you have called "Old River" channel after it intersects ranges 6 & 7.

A. The channel crosses the range line in the South-East quarter of section 24, 12-6 and passes through 24 & 25 in a Southerly direction and enters the scatters, or the right hand chute of Little River proper.

Q. 35. In what section?

A. In 25. Or it leaves rather 25 and enters 36 & 31.

Q. 36. On the plat that has been used by Mr. Odom and Mr. Biggs the meander line is shown in the South part of 35 and in the West half of section 36. Please state the nature of the ground along the side of that meander line and testify as to any channel or water course that may be about it.

A. From where the meander line leaves the right hand chute of Old River, section 36, a depression or slough follows the United States meander line through section- 36 and 35.

211 Cross-examination by Mr. ASHLEY:

Q. 1. When were you last over this body of unsurveyed land?

A. I was over it last at the time the survey was made.

Q. 2. In 1900?

A. Yes sir.

Q. 3. You have not been there since 1900?

A. No sir.

Q. 4. What time of the year was that survey made?

A. In September and October.

Q. 5. Who, if anybody, assisted you in making that survey?

A. I had two corps in there. Mr. Samuel Sage, at that time County Surveyor of Craighead County had charge of one party.

Q. 6. Did anybody else assist you in that survey?

A. A Mr. Earnest Acres had charge of the other party.

Q. 7. Where is Mr. Acres now?

A. In Mississippi County, Arkansas.

Q. 8. And the other gentleman was Sage, was he?

A. Samuel Sage.

Q. 9. Where is he?

A. Either at Lake City, or Jonesboro, I don't know which.

Q. 10. The plat there from which you have been testifying, the

same one that has been testified to by the other two witnesses, is the result of that survey and made about that time?

A. Yes sir.

Q. 11. And that is the same duplicate, or copy of the one filed in Poinsett County by you?

A. Yes sir.

Q. 12. Were you at that time connected with the St. Francis Levee Board?

A. No sir.

Q. 13. You were known as the engineer of the St. Francis Levee Board wer-n't you?

212 A. No sir, I have never had any connection with the St. Francis Levee Board in the capacity of a surveyor, and under the contract given me by the St. Francis Levee Board for the purchase of the unsurveyed lands it was stipulated and agreed that I was to survey the unsurveyed lands at my own expense in order to determine the amount of acres for which I had to pay.

Q. 14. Did you have any contract with the St. Francis Levee Board for the purchase of the lands in controversy in this case?

A. Yes sir.

Q. 15. Were you in any way interested in the transfer of these lands by the St. Francis Levee Board to Mr. Bodkin?

A. At that time Mr. Bodkin held a contract which contract was afterwards assigned over to me. The option was made in Charley Bodkin's name.

Q. 16. And in your interest?

A. Yes sir.

Q. 17. Was the conveyance to Bodkin? Did Bodkin actually hold the land?

A. Bodkin actually held the land.

Q. 18. But you were really the beneficial party?

A. Yes sir.

Q. 19. So the legal title, so far as the St. Francis Levee Board could convey any.

A. Passed to Charley Bodkin.

Q. 20. And the equitable title, so far as they could convey any, was in you?

A. Yes.

Q. 21. Now, Mr. Anthony you said that you have not actually been on any of these lands in controversy since that survey made in September, 1900?

A. 1900, yes sir.

Q. 22. About how many acres of land were there on the Southern end of Hatchie Coon Island in section 4 when you were over there in 1900?

213 A. You mean of that old United States survey?

Q. 23. No sir, how many acres actually were there in what a survey would make of the whole section, if extended up, that shows on your plat to be 4, 12-6?

A. I could not say without referring to the notes.

Q. 24. Should you think there would be about approximately 320 acres.

A. Yes, there is 640 acres.

Q. 25. I am talking about land.

A. Well, land.

Q. 26. How about section 3?

A. Same.

Q. 26. This land here at the Southern end of Hatchie Coon Island, section 10-15 you called Gum Island, now Isn't that called Hatchie Coon Island by a great many people?

A. No sir, well yes I think sometimes they call them the upper and lower Hatchie Coon Island, but people living in there make a distinction between the Hatchie Coon Island, and call one Hatchie Coon and the other Gum.

Q. 28. But some call it Hatchie Coon?

A. No.

Q. 29. But you said some call it Hatchie Coon.

A. Upper and Lower Hatchie Coon Island.

Q. 30. That is on account of the slough here is it?

A. Yes, and that is known as the "Cross Cypress" slough.

Q. 31. Have you ever been at that island in the early spring or winter?

A. Yes sir.

Q. 32. When, how long ago.

A. I was over that island in February, 1898. I was again over the island in the latter part of 1899.

Q. 33. Well, now, there are what are called pockets or holes of water all around in this ground are there not?

214 A. At low places wherever they are there is water where the flag is. There are times when I have been in there when the water averages two and a half and three feet deep.

Q. 34. This soil is covered with grass and flag and willow isn't it?

A. No sir, that is usually covered by old cypress.

Q. 35. Is there any flag in it?

A. There is when you get further South, but right around where the meander line is it is a thick growth of old cypress, four and five and six inches.

Q. 36. You refer now to the slough that you say is South of the old Southern meander line of Hatchie Coon Island?

A. Yes sir.

Q. 37. Now Mr. Anthony you are somewhat interested are you not in the result of the present law suit?

A. Yes sir.

Q. 38. Are you interested in the lands that are involved in this controversy at the present time?

A. No.

Q. 39. For how many acres of land did you have a contract with the St. Francis Levee Board?

A. I simply had a contract for all the unsurveyed lands within the St. Francis district.

Q. 40. Was there any estimate made of the amount of these?

A. No sir I don't think there was.

Q. 41. Did you at any time sign yourself as chief engineer of the St. Francis Levee District?

A. No sir.

Q. 42. Do you remember a correspondence controversy that you had with a man named Schierholz, special agent of the United States Land Office?

A. Yes.

215 Q. 43. Were you under any contract with the Levee Board to furnish information for the purpose of the recovery of timber on these unsurveyed lands?

A. Yes sir.

Q. 44. What was that contract?

A. My contract was, you understand that if I held an option on these lands I was practically the only man that knew where these lands were situated. In fact I found them, and as long as it was to my interest, as long as those lands were under contract with me, to protect the timber on these lands. The St. Francis Levee Board knowing this fact, and knowing that I was thoroughly familiar with all the lands within the St. Francis Levee Basin, entered into a contract with me whereby I agreed to take care of and protect their interests in so far as depredations on their timber was concerned.

Q. 45. And you were under a contract to furnish necessary information to show anybody that cut timber on these lands to be depredators, is that the way?

A. Yes sir.

Q. 46. Have you that contract that you had with them?

A. Yes sir.

Q. 47. Are you willing to let it go in this as a part of your deposition?

A. Yes sir.

Q. —. Will you get it then if you have it here?

A. All right.

Witness here produced contract between the Board of the St. Francis Levee District, by O. M. Killough, President.

Q. 49. Is this the original contract between you and the St. Francis Levee Board above referred to?

A. Yes sir.

Q. 50. I will ask you Mr. Anthony, with consent of your counsel Judge Norton, that you permit the Notary to make a copy of

216 this and attach it to your deposition in lieu of the original marking it Exhibit "2."

A. Yes sir.

Q. 51. By this contract, Mr. Anthony, in consideration of your services in procuring evidence to enable the said Board of Directors to recover said timber, or the value thereof, by such parties so trespassing upon said lands, the Levee Board agreed to pay you twenty-five per cent. of such sums collected. Now to do that it was necessary for you to furnish evidence that the Levee Board had some title to these unsurveyed lands was it not? In other words, you under-

took to furnish them evidence that parties were wrongfully cutting timber on these unsurveyed lands, and therefore you had to furnish evidence to show their title?

A. No.

Q. 52. That is, is not the evidence that you are now giving in this case an attempt on your part to carry out that contract in favor of the grantees of the Levee Board?

A. No, I don't see any connection in that.

Q. 53. How could you successfully prosecute anybody for cutting timber on lands unless the Levee Board was shown to have some title to it?

A. Well that is the part of the Levee Board, a thing that I had nothing to do with.

Q. 54. Wasn't that your contract?

A. It was my contract to furnish them the necessary evidence to prosecute people that depredated on their lands.

Q. 55. Were not these unsurveyed lands the very lands referred to?

A. No sir, that takes in the Levee Board lands as a whole, tax title lands and everything else.

Q. 56. Had you not as a matter of fact suggested to the Levee Board that they could claim title to these lands? Did not the suggestion originate with you?

A. No.

Q. 57. You say it did not originate with you to any ex-
217 tent, Mr. Anthony?

A. I just simply for my own part was perfectly satisfied in regard to the title and I told the Levee Board time and time again that I was perfectly willing to take the title.

Q. 58. You took an option on these unsurveyed lands at fifty cents an acre didn't you?

A. Yes sir.

Q. 58. And when the Levee Board transferred the lands to Bodkin they were really carrying out their option to transfer their claim to them at fifty cents per acre?

A. Yes sir.

Q. 60. Did you pay fifty cents per acre to the Levee Board?

A. Yes sir.

Q. 61. When was that Mr. Anthony?

A. In the fall of 1900.

Q. 62. Weren't you the only person who ever had any option on any of these unsurveyed sunk lands which are called the "St. Francis Lake District"?

A. No sir, there was one other option out.

Q. 63. Did the St. Francis Levee Board ever attempt to convey any of these St. Francis Lake Lands, or sunk lands except what they conveyed to you, what they conveyed to Mr. Bodkin in your interest?

A. No sir, yes they have conveyed to me outside of Bodkin, they have conveyed to me six thousand acres in addition.

Q. 64. Have you at the present any contingent interest, or interest of any kind in the outcome of this litigation?

A. No sir

Q. 65. When did your interest in this claim of the Levee Board to these lands cease?

A. It ceased in February, 1903.

Q. 66. February of this year?

A. Yes sir.

218 Q. 67. You are the representative of the defendants at the present time and in regard to these lands, and in regard to this suit, are you not?

A. Yes sir.

Q. 68. In your letter of May 20, 1902 to Charles M. Schierholz which I have been reading to you you said: "I also beg leave to inform you that two suits have been filed against us in regard to the title to these lands, and the Courts of Arkansas have so far decided that the title is vested in the Board."

Now I ask you whether that statement is correct?

A. That statement is correct as far as my conception of the case goes.

Q. 69. In this same letter in regard to the suits pending for *for* the recovery of the value of the timber in these unsurveyed lands, "will *said* that I am under contract with the Levee Board to furnish the necessary information and prosecution for the recovery of such timber."

Now you referred, Mr. Anthony, in the above letter to Mr. Schierholz to the contract that has been introduced heretofore in evidence and identified by you?

A. Yes sir.

Q. 70. You have signed this letter "James Anthony, C. E." what do you mean by "C. E."?

A. I meant Civil Engineer. C. E. after a man's name where he is a civil engineer simply demonstrates the fact that he is a graduate like M. D. after a Doctor's name.

Q. 71. How did the newspaper come to make the statement, "James Anthony, who is in the employ of the St. Francis Levee Board, published the following in the Commercial Appeal," that is a mistake is it?

A. Yes sir, they naturally drew their own conclusions about that. I only handed him the letter just like Mr. Schierholz did his letters.

219 Q. 72. But this is a correct copy of the letter as it was published, in what paper, do you remember?

A. Commercial Appeal. I have got a copy of it here. I will give you the whole paper.

Q. 73. Now Mr. Anthony you said a little while ago that in February, 1903 your interest in the outcome of this law suit ceased, except so far as you represented the defendants in the case in Arkansas, do you mean by that that your interest in the lands claimed by the Levee Board then ceased?

A. No. I simply mean that at that time the lands were sold to other people, my interest in the lands ceased.

Q. 74. How long before that Mr. Anthony Mr. Bodkin had trans-

ferred his claim of title to the land to H. C. Williamson, that is true isn't it?

A. Yes sir.

Q. 75. Then H. C. Williamson held any claim to the land that he had under the conveyance from Bodkin as trustee for you did he?

A. No. The lands were sold to H. C. Williamson.

Q. 76. What was the date of the conveyance from Bodkin to Williamson?

A. Well, there was two deeds made, one I think in November and one in February.

Q. 77. Do you mean February, 1903?

A. No, February, 1901.

Q. 78. But you stated a little while ago Mr. Anthony that your claim to an interest did not cease until 1903?

A. Bodkin transferred these lands to H. C. Williamson in 1901, and H. C. Williamson transferred these lands to Bigelow Brothers, that is this 11,500 acres in 1901. Bigelow Brothers transferred these lands to the Baue Lumber Company of Indianapolis in February 1903.

Q. 79. Well, up to the time of the last transfer mentioned
220 you were still interested in the claim of the Levee Board and its grantees to these lands?

A. Yes sir.

Q. 80. Was that interest evidenced by writing?

A. Not to these particular lands in question.

Q. 81. Well what was the nature of your interest, how was it evidenced?

A. Well, my interest is the interest in the unsurveyed lands; you understand there are two tracts in here; the suit in question covers the Bigelow tract of 11,500 acres.

Q. 82. This suit you mean?

A. This suit, yes. Now outside of these lands I was interested in 6,000 acres of similar lands.

Q. 83. And you are still so interested are you Mr. Anthony?

A. No sir, we have transferred the lands.

Q. 84. Did you give to these last gentlemen any assurance that you would furnish evidence to prove their title to the lands similar to what you gave the Levee Board originally?

A. In so far as the warranty deed goes, yes.

Q. 85. You never signed any warranty deed to these unsurveyed lands did you Mr. Anthony?

A. No.

Q. 86. Do you consider yourself then responsible for the covenants of warranty in the Bodkin deed?

A. Yes sir.

Q. 87. So then you have, have you not Mr. Anthony, a vital interest in the determination of this controversy?

A. In so far as the warranty deed goes, yes.

And further deponent saith not.

JAMES ANTHONY.

221 Subscribed & sworn to before me this September the first 1903.

ROB'T B. GOODWIN,
Notary Public.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

Contract.

Whereas, the Board of Directors of the St. Francis Levee District owns considerable timber lands within its boundaries:

And whereas, it is represented to its officers that certain persons have been trespassing and cutting timber upon the said lands, and there are already suits instituted and in contemplation against such parties for the recovery of the said timber or the value thereof:

And whereas, Jas. Anthony is an experienced timber man and surveyor and is acquainted with the said land:

Now therefore, the said Board of Directors of the St. Francis Levee District for and in consideration of the services of the said Jas. Anthony in securing evidence to enable the said Board of Directors to recover the said timber, or the value thereof so cut by such parties so trespassing upon the said lands, hereby agree to pay the said Jas. Anthony twenty-five per cent. (25%) of all sums recovered and collected from parties so trespassing and cutting timber on said lands for the timber so cut by them.

And I, Jas. Anthony, in consideration of such twenty-five per cent. (25%) agree to keep watch over all of the said lands of the said Board of Directors, report the cutting of timber thereon by trespassers, and collect and procure evidence thereof and furnish the same to the said Board to enable them to recover the said timber or the value thereof.

(Signed) BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT,

221½ By O. N. KILLOUGH, *President.*

JAMES ANTHONY.

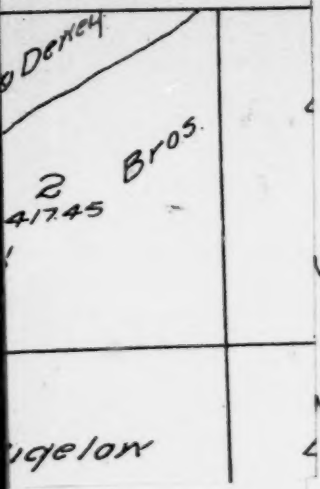
Attest:

HUGH R. McVEIGH, *Secretary.*

"Ex. 2" Deposition of James Anthony R. B. Goodwin, N. P.

(Endorsed on back:) Filed Sept. 11" 1903. B. F. Cole, Clerk.

(Here follows diagram marked p. 221*a*.)



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222 *Deed to W. D. Mallory.*

The State of Arkansas to all to whom these presents shall come, Greeting:

Know Ye that W. D. Mallory has this day purchased from the State of Arkansas the Fractional South Half and the Fractional South Half of the North Half of Section Twenty Eight (28) and the Fractional North Half of Section Thirty three in Township Twelve North of the Base Line in Range Six (6) East of the Fifth Principal Meridian containing Five Hundred and Si-ty-three & 36/100 (563.36/100) Acres the same being a portion of the Swamp and Overflowed lands selected by the State of Arkansas as inuring to the said State under the provisions of an act of the Congress of the United States of America entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved 28th September 1850 and which still remains unapproved and unpatented to the State of Arkansas by the General Government.

Now therefore I, C. B. Myers Commissioner of State Lands in and for the State of Arkansas in pursuance of the provisions of an Act of the General Assembly, entitled "An Act to authorize the sale of swamp lands in certain cases" approved 18th March 1879 and for the consideration of Seven Hundred and Four Dollars and twenty cents this date paid to the Treasurer of the State of Arkansas being the amount in full for the purchase money for said land the receipt for the same being now on file in my office do hereby for and in behalf of the State of Arkansas grant bargain sell and convey to the said W. D. Mallory and to his heirs and assigns forever all the right title interest and claim the State of Arkansas has in and to the above described land together with all the appurtenances hereaditaments thereunto belonging.

To have and to hold the same as now held by the said State unto the said W. D. Mallory and unto his heirs and assigns for ever.

Provided however that if the land above described and conveyed is of the character not comprehended in the act of Congress granting the swamp and overflowed lands to the State of Arkansas
223 then and in that case the said W. D. Mallory shall have no claim or demand on the State of Arkansas for recoupment or otherwise.

In testimony whereof I, C. B. Myers Commissioner of State Lands for the State of Arkansas have hereunto set my hand and caused the seal of this office to be affixed at the City of Little Rock, on this 28th day of October 1892.

[SEAL.]

C. B. MYERS,
Commissioner of State Lands.

Filed in my office for record this 12" day of November 1892 and recorded the same day and date.

A. A. COPPAGE, *Clerk.*

STATE OF ARKANSAS, *County of Poinsett:*

I, B. F. Cole, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full, true and complete copy of the Deed wherein the State of Arkansas appears as grantor and W. D. Mallor- appears as grantee as the same appears of record in Mortgage Record "F" page 201.

Witness my hand and seal as such Clerk this 5" day
[SEAL.] of September 1903.

B. F. COLE, *Clerk.*

(Endorsed on back:) #10 Filed Sept. 11" 1903. B. F. Cole, Clerk.

224 *Decree.*

CHAPMAN & DEWEY LAND COMPANY, Plaintiff,
vs.
CHAS. H. BIGELOW, N. P. BIGELOW, L. T. WALKER, and F. H. HARTSHORN.

Comes the plaintiff, Chapman & Dewey Land Company, a corporation under the laws of the State of Missouri, by Henry D. Ashley, R. S. Rodgers and Frierson & Frierson, its solicitors, and the defendants, Chas. H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, by N. W. Norton, their solicitor, and this cause is submitted upon the complaint and answer, cross complaint and reply thereto, and upon the exhibits to said pleadings, photo-lithographic plats, according to United States surveys, field notes, selections and approvals, patents, conveyances and documentary evidence; and upon the depositions of Geo. C. Peters, F. H. Varner, T. L. Davis, Jno. M. Biggs, Chas. S. Odom and James Anthony, and exhibits thereto; and upon consideration thereof and being fully advised, the Court finds that the plaintiff is without title to the lands to which it seeks to have its title quieted in this action and is without equity to have the title of defendants thereto held void and invalid, the said lands being situated in the County of Poinsett in the State of Arkansas and described as follows:

All section 1, all section 10, all section 11, all section 12, all section 13, all section 14, all section 23, all section 24, all section 26, all section 34, all fractional section 9, all fractional section 15, all fractional section 22, all fractional section 25, all fractional section 27, all fractional section 28 lying East of the main channel of the St. Francis River, all fractional section 33 lying east of the main channel of St. Francis River, as shown on said Anthony survey;
225 all fractional section 35 lying north and west of the meandered line as per original United States survey as shown by plats of date August 8, 1849, all fractional section 36 lying north and west of the meandered line of the Lake or Sunk Lands as per original United States survey, as shown by plats of date Au-

gust 8, 1849; all fractional section 2 lying south and east of meandered line as per original United States survey, as shown by plats of date August 8, 1849, all in township 12 North of base line in range 6 east of the Fifth Principal Meridian, all east of St. Francis River.

And all fractional section 3, township 12 north range 6 east lying south of meandered line as per original United States survey as shown by plats of date August 8, 1849, 167.47 acres. All fractional section 4, township 12 north range 6 east lying west and south of meandered line as per original United States survey as shown by plats of date August 8, 1849, 249.99 acres. All fractional section 18, township 12 north range 7 east lying west of meandered line as per original United States survey as shown by plats of date October 27, 1845, 503.03 acres. All fractional section 19, township 12 north range 7 east lying west of meandered line as per original United States survey as shown by plats of date October 27, 1845, 230.12 acres; and containing in all eleven thousand five hundred and forty two and 96/100 acres (11,542.96), more or less. All according to the Anthony Survey of September and October 1900, recorded in Plat Book "B" pages 1, 2 and 3 with field notes for same in Plat Book "B" pages 5 and 6.

It is therefore by the Court considered, ordered and decreed that the plaintiff take nothing by this action and that the plaintiff's complaint be and the same is hereby dismissed for want of equity; and that the defendants do have and recover of and from the plaintiff all costs incurred in this action for which execution may issue as at law, to all of which rulings and decisions of the court plaintiff excepts.

As this decree against the plaintiff in the original com-
226 plaint determines the rights of the parties to the property, the injunction prayed in the cross bill of defendants is unnecessary and on that account not ordered. And leave is given the parties hereto to withdraw all original deeds introduced in evidence in this case.

And the plaintiff prays an appeal to the Supreme Court of the State of Arkansas, which is by the Court granted, and plaintiff prays leave to file a bill of exceptions, which is allowed and ninety days granted in which to file bill of exceptions.

227 In the Chancery Court of Poinsett County, Arkansas.

CHAPMAN & DEWEY LAND COMPANY, Plaintiff,

vs.

CHAS. H. BIGELOW, N. P. BIGELOW, L. T. WALKER, and F. H. HARTSHORN, Defendants.

Bill of Exceptions.

Be it remembered, that on the 11th day of September, 1903, being a day of the regular September term, 1903, of the Chancery Court of

Poinsett County, Arkansas, the above cause coming on to be heard before the Honorable E. D. Robertson, Chancellor, the following proceedings were had, to wit:

The plaintiff to maintain the issues on its part introduced evidence as follows:

Plaintiff introduced in evidence certified copies of the plats of the United States Government Survey of Township Twelve (12) North, Range Six (6) East, and Township Twelve (12) North, Range Seven (7) East; said plats being the same as are filed a- Exhibits "E" and "F" to the complaint of the plaintiff, which are hereby referred to and made a part hereof as fully as though copied in this bill of exceptions. (See pages 18 and 19 of Transcript.) Defendant's attorney states that he has no objection to the same.

Plaintiff then introduced in evidence parts of the United States patents in so far as they relate to Township Twelve (12) North, Range Six E. and Twp. 12 N. R. Seven East; no objection being made. Said patents are the same as are filed as Exhibits B1 and B2 respectively to the complaint, and are made a part hereof as fully as though copied in this bill of exceptions. (See pages 20-22 and 23-24 of Transcript.)

Plaintiff then introduced in evidence copies of the field notes of the United States survey of fractional Sec. 2, Frl. Sec. 3, N. E. 1/4 of Frl. Sec. 4, all Frl. Sec. 35; All Frl. Sec. 36, all in Township 12 North, Range 6 East. Also copies of field notes of United States Survey of all Frl. Secs. 6, 7, 18, 19 and 30, in Township 12 North, Range Seven East. Defendants make no objection to the
228 introduction of such evidence. Said field notes are the same as are filed as Exhibits "C" and "D" respectively to the complaint and are made a part hereof as though copied in this bill of exceptions. (See pages 25 to 41 and — of Transcript.)

Plaintiff then introduced in evidence selections and approvals of lands in above township 12 North, Range Six East, and in Township 12 North, Range Seven East; no objection being offered. Said selections and aprovals being the same as are heretofore filed as Exhibits "A" and "B" to the plaintiff'- complaint, and they are made a part hereof as though copied in this bill of exceptions. (See Transcript pages 42 to 45.)

Plaintiff then introduced in evidence patent from the State of Arkansas to Moses S. Beach, dated June 12, 1871, conveying all of Secs. 18, all of Sec. 19, and all of Sec. 30, in Twp. 12, North, Range Seven East, among other lands, recorded in Poinsett County in Book H. P. 315; said patent being the same filed as Exhibit "G" to the complaint, and which is made a part hereof as fully as though copied in this bill of exceptions. (See pages 46 & 47 of Transcript.)

Plaintiffs then introduced in evidence Patent from the State of Arkansas dated June 12, 1871, to Moses S. Beach, of Sec. 36, Twp. Thirteen North, Range Six East. It being admitted that the title to Sec. 36, Twp. 13 N. R. 6 E., is the same in all respects in plaintiff, as Sec. 2, Twp. 12 N. R. 6 E. Said patent being the same filed as Exhibit "H1" to the complaint and is made a part hereof as fully as though copied in this bill of exceptions. (See page 48 & 49 of Transcript.)

Plaintiff then introduced in evidence patent from the State of Arkansas to Moses S. Beach, of the same date, in all respects similar, to the following lands: All Frl. Sec. 2, N. E. 1/4 of Frl. Sec. 4, All Frl. Se-. 3, All Frl. Sec. 35, All Frl. — 36, all in Township 12, north, Range Six East. Said Patent is the same as is filed as Exhibit "H" to the complaint and it is made a part hereof as though copied herein. (See Transcript page- 50 & 51.)

Plaintiff then introduced in evidence deed from the heirs of Moses S. Beach to William B. Beach, recorded in Poinsett County in Book H, P. 444 *et seq.* This is admitted by all parties hereto and
229 it is further admitted by all parties hereto that these are all the heirs of Moses S. Beach, and that Moses S. Beach died intestate. Said Deed is the same as filed as Exhibit "I" to the complaint, and it is made a part hereof as though copied in full in this bill of exceptions. (See page- 52 to 56 of Transcript.)

Plaintiff then introduced deeds from William B. Beach and wife to Chapman & Dewey Land Company for certain lands in Township 12 & 13 North, Ranges Six and Seven East, which are also by all parties hereto admitted, which are recorded as follows: In Poinsett County in Book M, page 89 and following; in Craighead County Book 4, p. 170; said deeds being the same filed as Exhibits J and J1 respectively to the complaint of plaintiff and are made parts hereof as fully as though copied herein. (See pages 57 to 61 and 62 to 65 of Transcript.)

Plaintiff introduced in evidence in connection with Secs. 6 and 7, Twp. 12 N. R. 7 E. a deed from Godbey, Commissioner, to the Arkansas Land Company, which is recorded in Poinsett County in Record F/pp. 69 and 79 Inclusive, said deed being the same as filed as Exhibit K to the complaint, and it is made a part hereof as fully as though copied herein. (See pages 66, 67 and 68 of Transcript.)

Plaintiff introduced in evidence deed from Arkansas Land Company to Robert Law, recorded in Poinsett County, Book J, p. 151 to 157 inclusive; same being the deed filed as Exhibit "L" to plaintiff's complaint, which is made a part hereof as fully as though copied herein. (See Transcript page- 69 to 71.)

Plaintiff introduced in evidence original deed from the heirs of Robt. Law (it being admitted by counsel for defendant that these are all the heirs of Robt. Law, who died intestate) to Chapman & Dewey Land Company, recorded in Record O pp. 111 and 112; said deed being the same filed as Exhibit "M" to the complaint, which is made a part hereof as fully as though copied herein. (See Transcript page- 72 to 74.)

Plaintiff then introduced in evidence deed from S. A. Brown, Clerk, to Chapman & Dewey Land Company, recorded on June 14, 1900, in Record M p. 24; same being the deed filed as Exhibit "N" to complaint, which is made a part hereof as fully as though copied herein. (See Transcript page- 75 to 77.)

230 Plaintiff then introduced deed in evidence from S. A. Bowen, Clerk, to Chapman & Dewey Land Company, recorded in Record N, p. 23, being the deed filed as Exhibit "O" to the com-

plaint, which is hereby made a part of this bill of exceptions as though copied herein. (See Transcript page- 78 to 80.)

Plaintiff then introduced in evidence deed from Arkansas Land Company to Chapman & Dewey Land Company, dated June 15, 1900, said deed being recorded in Book O, pp. 111 and 112; being the same deed filed with the complaint as Exhibit "P" which is made a part hereof as though copied herein. (See Transcript page- 81 to 83.)

Plaintiff then introduced in evidence confirmation decree recorded in Chancery Court record C, pp. 53 and 54, rendered by the Poinsett Chancery Court; being the same decree as that of which a copy is filed as Exhibit "Q" to the complaint, which is made a part hereof. (See Transcript p. 84 to 86.)

Plaintiff then introduced in evidence decree of Poinsett Chancery Court confirming title, recorded in Chancery Record "B" pp. 551 and 552; same being the decree of which a copy is attached to the complaint as Exhibit "R," and same is made a part hereof as though copied herein. (See Transcript page 87 to 89.)

Mr. Ashley on behalf of the plaintiff then offered in evidence the depositions of George Peters, T. L. Davis and F. H. Varner, taken in another case, which it was stipulated either saide might read, making the following written offer:

"Plaintiff offers in evidence the deposition of Peters, Davis and Varner, taken in another case, for the purpose of showing the present condition of the *locus in quo* in controversy and not for the purpose of showing or even as tending to show by inference, the condition of the *locus in quo* at the date of the United States Surveys and plats, or at the date of the Swamp Land Grant, namely Sept. 28, 1850; and therefore specially excepts from offer and moves to strike out volunteer statement of witness Peters from mark # to mark #, beginning, 'I want to say further' to 'Did you find same,' being volunteer statement of a mere opinion, not responsive to any question, and incompetent, immaterial and irrelevant to any issue in this case,
231 and because it tends to contradict by volunteer oral expression of opinion the United States plats and surveys and the ruling of the Secretary of the Interior thereon."

At this point it is stated by counsel for plaintiff and for defendant that it was agreed originally that either party might read these depositions of Peters, Varner and Davis. But neither party claims the right under this agreement to urge incompetent testimony upon the court.

Mr. Ashley on behalf of plaintiff then read for plaintiff the deposition of G. C. Peters, above mentioned, which is in words and figures as follows, to-wit: (See Transcript page 108 to 123.)

Plaintiff then introduced in evidence the plat referred to in the deposition of George C. Peters just read, which is attached as an exhibit to the deposition of T. L. Davis filed herein.

Plaintiff then read in evidence the deposition of T. L. Davis, above mentioned, taken in another case, which is in words and figures as follows: (See Transcript page 124 to 143.)

Plaintiff then introduced in evidence the deposition of F. H.

Varner, above mentioned, taken in another case, in words and figures as follows: (See Transcript page 144 to 148.)

Mr. Ashley on behalf of plaintiff then read from the original opinion of the Secretary of the Interior, hereinafter offered in evidence, the letter of H. N. Pharr, Engineer of the St. Francis Levee Board, to the Secretary of the Interior, in order to show how the question discussed in said opinion came before the Secretary of the Interior for decision, same being embodied in the said opinion hereinafter referred to.

Plaintiff then offered in evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, which was filed and made a part of the record in this cause, which is in words and figures as follows, to-wit: (See Transcript page 149 to 156.)

232 Mr. Norton on behalf of defendants objects to the introduction in evidence of the proceedings before the Secretary of the Interior as set forth in the above document; and objects to the introduction in evidence of the finding of the Secretary of the Interior.

Mr. Ashley for the plaintiff states that the above decision of the Secretary of the Interior is *res adjudicata* on the question of fact as to whether or not the *locus in quo* was a body of water at the date of the Swamp Land Grant, and states that it is held by the courts of the States and of the United States that such decision is conclusive as to the character of the land. That the Secretary of the Interior decided on the application of the grantors of the defendants, the St. Francis Levee District, as to this identical land, that it was at the date of the swamp land grant, water, and that it went to the riparian grantee. That the State of Arkansas was riparian grantee, and that the grant of the State was identical with the grant of the United States to the State. Mr. Ashley for plaintiff asks that this ruling of the Secretary of the Interior, holding that these unsurveyed portions of Twps. 12 N. Ranges 6 and 7 E. were permanent bodies of water at the date of the Swamp Land Grant, and that they belong to the riparian owners of sections properly meandered on such permanent body of water, be considered as a final decision of the question of fact that they were at the date of the grant covered by a permanent body of water, not as swamp lands but by riparian rights.

The court overruled plaintiff's offer for that purpose, stating that he considered it a question for the court, and that to so accept the decision of the Secretary of the Interior would be to permit the Secretary to invade the province of the court. To which ruling of the court, the plaintiff at the time excepted and its exceptions were noted of record.

Mr. Ashley for plaintiff argues that the United States has the right to say through its Secretary that it does not grant land
233 as swamp land, but by riparian rights. The court rules that the decision of the Secretary of the Interior is simply a ruling by the department that the United States makes no claim to the land. To which ruling of the court the plaintiff then and there excepted and its exceptions were noted of record.

Mr. Ashley for plaintiff argues that the decision of the Secretary of the Interior was a finding on the question of fact that the land in controversy was at the date of the grant covered by a permanent body of water, and that oral evidence is not admissible to show that it was not a body of water in 1850; and contends that the ruling of the Secretary of the Interior as to whether it was land or water at that date is final. Plaintiff specifically requests that the decision of the Secretary of the Interior be admitted in evidence for the purpose of showing that, in regard to the identical lands in controversy, the Secretary of the Interior of the United States has passed on the question of whether or not it is swamp land, and has held that at the date of the grant to the State it was a permanent body of water and therefore, such decision is on this question in the nature of *res adjudicata*.

The court overrules this offer, and rules that the decision of the Secretary of the Interior is not admissible in this case, and that the Secretary of the Interior could not make a decision that would be binding upon the State; that the Secretary of the Interior could not make a binding decision in a contest between the State and a riparian owner as to what was the condition at the time of the swamp land grant, and that the Secretary could not bind the State by an *ex parte* opinion. To this ruling of the court, the plaintiff excepts, at the time, and its exceptions are noted of record.

Mr. Ashley for plaintiff urges that numerous decisions hold that the Secretary of the Interior may make a ruling on such a question of fact, and that the oral testimony in such cases is admissible only where the Secretary has failed or refused to make a ruling.

234 The court rules finally that it will not admit in evidence the decision of the Secretary of the Interior as *res adjudicata* on the question of whether or not in 1850 the property in controversy was a body of land, or water, stating that he does not think the Secretary of the Interior has the power to decide the question. To which ruling the plaintiff at the time excepted and its exceptions are noted of record.

Plaintiff then offered in evidence said decision of the Secretary of the Interior hereinbefore filed, (about the genuineness and authenticity of which there is no question made by counsel; and which is admitted to be genuine and authentic) to show that said Secretary has decided that these fractional sections having been meandered, according to the plats, upon blank, unsectionalized portions of the townships, as shown by the Government plats, such blank, unsectionalized portions are not surveyed but are unsurveyed, and furthermore because in such opinion the Secretary of the Interior holds that these unsectionalized portions have never been surveyed, and that they never having been patented, or surveyed or selected, they could not pass to the State of Arkansas, as swamp land.

Plaintiff further offers said decision of the Secretary of the Interior in evidence for the purpose of showing that the land in controversy has never been surveyed under the direction of the United States Land Department.

Plaintiff offers it for the further purpose of showing that in mak-

ing surveys of publi- lands the United States Land Department does not treat as surveyed lands portions of townships which appear upon the plats of such surveys as unsectionalized, which are not subdivided into legal subdivisions, and which are meandered, on such township plats as bodies of water.

Plaintiff offers said decision for the further reason that the selection, approval, confirmation, platting, and patenting of
235 United States Government Lands are the concurrent action of the Federal and State officers having the authority, and that the Secretary of the Interior has in such opinion passed upon the question of what were in fact at the date of the Swamp Land Grant in 1850, swamp and overflowed lands within these townships.

Plaintiff offers said decision of the Secretary of the Interior for the further reason that in it said Secretary of the Interior says: "As these lands have not been patented, approved or confirmed to the State, and have not been sold by the State to any person." Such language being a finding that the said lands have not been patented, approved or confirmed to the State.

The court overrules the offers of said plaintiff, and excludes said decision of the Secretary of the Interior from evidence To which ruling the plaintiff then and there excepted, and its exceptions were noted of record.

This was all the evidence on the part of plaintiffs.

Defendants by Mr. Norton then introduced and read in evidence to maintain the issues on their part the following evidence: Patents from the United States to the State of Arkansas covering Township Twelve North Range six east, and Township Twelve North, Range Seven east, also introduced by plaintiffs.

Defendants read in evidence the notes of the government surveyor, certified by the State Land Commissioner reading as follows, to-wit: "The water is at a low stage at this time, and it is utterly impossible to get to the south boundary, etc." (See Transcript page 157.)

Defendants then read in evidence, over the objection of plaintiff, as hereinafter noted, the deposition of John M. Biggs; the objection of the plaintiff being as follows:

236 "Plaintiff objects to the introduction of the depositions of John M. Biggs, Charles S. Odom, and James Anthony, if offered for the purpose, and in so far as they attempt, by inference or otherwise, to impeach or contradict the official plats and field notes of surveys made under the general direction of the General Land Office of the United States, or to attack the finality or correctness of the ruling of the Secretary of the Interior to the effect that the unsurveyed lands in controversy were at the date of the Swamp Land Grant covered by a permanent body of water and that the surveyed fractional sections and parts of sections owned by plaintiff were in such surveys and plats properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purpose in this case, because the Secretary of the Interior has not failed or refused, but has actually officially passed upon such question of fact, especially as no one of said witnesses claims to have known any-

thing about the *locus in quo* earlier than 1878, and such oral testimony of conditions existing since 1878 is incompetent, immaterial and irrelevant for the purpose of attempting to show the condition of *locus in quo* in September 28, 1850.

The court thereupon overruled the objection of plaintiff, and permitted the introduction of said depositions of Odom, Anthony and Biggs; to the overruling of which objection and the introduction of such evidence, the plaintiff at the time excepted and asked that its exceptions be noted of record, which was done.

Mr. Norton for defendants then read in evidence, over the objections and exceptions of plaintiff, as above stated, the deposition of John M. Biggs, which is in words and figures as follows: (See Transcript page 161 to 174.)

Mr. Norton for defendants then read in evidence the deposition of Charles S. Odom, against the objections and over the exceptions of plaintiff as set forth hereinbefore; which said deposition is as follows: (See Transcript page 175 to 178.)

237 Mr. Norton on behalf of Defendants then read in evidence the deposition of James Anthony, over the objections and exceptions of plaintiffs, as set forth above, which deposition is as follows: (See Transcript page 179 to 194.)

Plaintiff specially objects to part of Anthony's deposition on page 183, (being page 24 of the original deposition) and from thence to the end of the direct examination, and moves to strike it out, in so far as it is attempted to show by oral evidence the condition of the *locus in quo* at the date of the Swamp Land Grant, Sept. 28, 1850, especially in view of the fact that the witness has already testified that he didn't know anything about it earlier than 1874. Which objection and motion is by the court overruled, to which ruling the plaintiff at the time excepts and asks that his exceptions be noted of record.

Defendants here rest.

Plaintiff offers in rebuttal a quit claim deed from the State of Arkansas to one W. B. Mallory to certain lands in the same township, on the other side of the river, Frl. N. ½ of Sec. 28, and Frl. N. ½ of Sec. 33, to show that the State of Arkansas has never claimed any title to the land in controversy and has treated said lands as unconfirmed and unpatented from the United States to the State of Arkansas; which deed is as follows: (See Transcript pages 198 & 199.)

The introduction of this deed is objected to by defendant; and the court sustains said objection and excludes said evidence; to which ruling of the court in sustaining said objection and excluding said evidence, the plaintiff at the time excepts and asks that its exceptions be noted of record, which is done.

All the documents herein referred to were duly filed at the hearing and made part of the record of this cause.

238 This was all the evidence introduced by either party on the trial of this cause.

And that the above matters, rulings and exceptions may be made a part of the record, plaintiff tenders this, its bill of exceptions, and

prays that the same may be signed and sealed as such, which is accordingly done and the same made a part of the record, this 2nd day of Dec. 1903.

E. D. ROBERTSON,
Chancellor of the Fifth Chancery District of the State of Arkansas.

(Endorsed on back:) Chapman & Dewey Land Co. *vs.* Bigelow *et al.* Bill of Exceptions. Filed Dec. 3rd, 1903. B. F. Cole, Clerk. By W. W. Nelms, D. C.

239 *Clerk's Certificate.*

Certificate.

STATE OF ARKANSAS, *County of Pointsett:*

I, B. F. Cole, Clerk of the Chancery Court within and for the County and State aforesaid do hereby certify that the annexed and foregoing pages contain a full, true and complete transcript of all the files and record entries in the case of Chapman and Dewey Land Company, Plaintiff *vs.* Charles H. Biglow, N. P. Biglow, L. T. Walker and F. H. Hartshorn, defendants, which appear on file and of record in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 24″ day of February, 1904.

[SEAL.] B. F. COLE, *Clerk.*

Prayer for Appeal.

Comes the plaintiff and prays an appeal from the decree herein.

FRIERSON & FRIERSON,
ASHLEY, GILBERT & DUNN.

Appeal granted this 2nd day of March, 1904.
P. D. ENGLISH, *Cl'k,*
By J. H. CAMPBELL, *D. C.*

240 *Entry of Appearance.*

N. W. Norton, Attorney at Law.

FOREST CITY, ARK., *Mc. 3rd,* 1904.

P. D. English, Clerk, Little Rock, Ark.

DEAR SIR: Mr. Frierson yesterday filed a transcript from Pointsett Chancery—Chapman-Dewey Land Co. *vs.* Bigelow *et al.* I hereby enter the appearance of the appellees.

Very truly, N. W. NORTON.

241 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of May, A. D. 1905, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 16th day of October, 1905, a day of said term, and subsequent days, viz:

Proceedings, Supreme Court.

CHAPMAN & DEWEY LAND COMPANY, Appellant,
vs.
CHARLES H. BIGELOW ET AL., Appellees.

Appeal from Poinsett Chancery Court.

OCTOBER 16TH, A. D. 1905.

On motion this cause is by the Court set for oral argument on October 23rd inst.

OCTOBER 23RD, 1905.

On motion this cause is set for oral argument on October 30th Inst.

OCTOBER 30TH, 1905.

Come the parties by their respective Solicitors and this cause, after oral argument, is submitted upon the transcript of the record and the briefs filed, and by the court taken under advisement.

242 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House, in the City of Little Rock, on the 27th day, being the fourth Monday of November, A. D. 1905, amongst others, were the following proceedings, to-wit: On the 6th day of January, A. D. 1906, a day of said term:

CHAPMAN & DEWEY LAND COMPANY, Appellant,
vs.
CHARLES H. BIGELOW ET AL., Appellees.

Appeal from Poinsett Chancery Court.

This cause came on to be heard upon the transcript of the record of the Poinsett Chancery Court, and was argued by the solicitors of the parties, on consideration whereof it is the opinion of the

Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It is therefore ordered and decreed that the decree of said Chancery Court in this cause be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellees recover of said appellant all their costs in this Court in this cause expended, and have execution thereof.

McCulloch J. dissents.

243 (Caption Omitted.)

SATURDAY, *January 27th, A. D.* 1906.

On motion, it is ordered by the Court that the time for filing a petition for a Re-hearing herein be extended ten days.

NOTE.—No petition for Re-hearing was ever filed.

Attest:

P. D. ENGLISH, *Clerk.*

244 No. 41.

In the Supreme Court of Arkansas, Jan'y 6, 1906.

CHAPMAN AND DEWEY LAND CO.
v.
BIGELOW.

Opinion.

BATTLE, *J.:*

Chapman & Dewey Land Company, a corporation organized under the laws of the State of Missouri, brought a suit against Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn to quiet title to certain lands, and for that purpose to have declared void and of no effect certain conveyances under which the defendants claim title thereto.

Plaintiff claims title under an act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the Swamp lands within their limits," approved September 28, 1850. It alleges that, in pursuance of the provisions of this act, surveyed sections and parts of fractional sections in fractional township twelve north of the base line, in range six east of the fifth principal meridian, and in township twelve north of the base line, in range seven east of the fifth principal meridian, and in Poinsett county, in this State, were duly selected, approved and patented to the State of Arkansas, as a part of the Swamp Land Grant; that certain of these lands were conveyed by the State of Arkansas, on the 12th day of June, 1871, to Moses S. Beach; that plaintiff acquired, and is the owner of, these lands so conveyed to Beach, as well as certain other of the lands which were deeded to the State of Arkansas by the United States; that many of the legal subdivisions of sections so acquired by plain-

tiff were bounded by a large body of non-navigable water called in the official surveys of the United States and field notes thereof as the "Sunk Lands," "St. Francis River Sunk Lands," the "Hatchie Coon Sunk Lands," and the "Cutoff Lake;" that the legal subdivisions so bounding were fractional, and in the survey were meandered along such body of water. The plaintiff, thereupon claims the lands lying under this body of water; and these are the lands in controversy in this suit to which it (plaintiff) seeks a decree to quiet its title as against the defendants.

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Plaintiff alleges that these lands are wild, unimproved and unoccupied, and that the defendants are claiming them under certain deeds; and asks that these deeds be declared void, invalid, and of no force whatever.

The defendants answered, and denied that the so-called "Sunk Land" was a body of water, or that it is shown to be by the surveys of the United States or the field notes; but that it was sometimes temporarily flooded with water, and was land bearing "trees and vegetables, willow and cypress;" and that the meandered lines run as alleged by plaintiff were run as boundaries, and not for the purpose of finding the number of acres in the sections or legal subdivisions "for which purchasers would have to pay when the government might dispose of the land."

The chancery court, after hearing the evidence adduced by all the parties, dismissed the complaint for want of equity, and rendered judgment in favor of the defendants for costs; and the plaintiff appealed.

We have attempted to state briefly so much of the pleadings in the case as presents the issue for our consideration. Before noticing the facts, we will consider the law of the case.

In Hardin *v.* Jordan, 140 U. S. 371, the court, after an extensive review of authorities, held that, "by the common law, under a grant of lands bounded on a lake or pond which is not tide-water and is not navigable, the grantee takes to the center of the lake or pond, ratably with other riparian proprietors, if there be such."

Horne *v.* Smith, 159 U. S. 40, was an action to recover the possession of certain lots. "Plaintiff's title vests on a patent from the United States, dated March 20, 1885, conveying 'lot numbered seven of section twenty-three, and the lots numbered one and two of section twenty-six, in township twenty-nine south, of range thirty-eight east of Tallahassee meridian in Florida, containing one hundred and seventy acres and forty-two hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general. The official plat of township 29 was in evidence, which showed that sections 23 and 26 were fractional sections bordering on the Indian River. On this plat a meander line runs through the sections from north to south, the Indian River being on the west thereof. The east line of the sections is, so far as these lots are concerned, the ordinary straight line of government surveys. In the south half of the southeast quarter of section 23 is lot 7. The area of that lot is given as 73.06 acres. The northeast quarter of section 26 is di-

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vided into lots 1 and 2. The area of lot 1 is 54.90 acres, and of lot 2, 42.53 acres. The boundary lines of these three lots are all straight with the exception of the meander line on the west. The length of the section line between lot 7 and lot 1, extending from the east section line to the meander line on the west, is stated to be 30.55 chains. Along the course of this meander line, as shown on the plat, runs, according to the testimony, a bayou or Savannah opening into Indian River, and west of this bayou, and between it and the main waters of the river, is a body of land extending in width a distance of a mile or a mile and a quarter, and amounting to some 600 acres. This is a body of low land, in some places however from four to six feet above the level of the river, and covered with a growth of live oak trees, many of them three and four feet in diameter. It was not land formed by accretion since the survey."

Mr. Justice Brewer, in delivering the opinion of the court, said: "But the question in the case is whether the boundary of these lots is the bayou or the main body of the river. That a water line runs along the course of the meander line cannot, of course, in the face of the plat and survey, be questioned, but that the meander 246½ line of the plat is the water line of the bayou, rather than that of the main body of the river, is evident from these facts. In the first place, the area of the lot is given, and when that area is stated to be 170 acres, it is obvious that no survey was intended of over 700 acres. In the second place, the meander line, as shown on the plat, is, so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water line of the main body of the river is a mile or a mile and a quarter west thereof, in sections 22 and 27. Again, the distance from the east line of the section to the meander line is given, which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half. Further, the description in the patent is of certain lots in sections 23 and 26, and manifestly, that was not intended to include land in sections 22 and 27. These considerations are conclusive that the water line which was surveyed, and made the boundary of the lots, was the water line of the bayou or savannah, and there has been simply an omission to make any survey of the tract west of the bayou, and between it and the main body of the Indian River."

Again he says: "But it is said that because the water mentioned on the plat is called Indian River the boundary must be taken as the water line of the river, and cannot be that of any intermediate bayou. * * * In the case before us, obviously the surveyors surveyed only to this bayou, and called that the river."

French-Glenn Live Stock Company *v.* Springer, 185 U. S. 47, was an action to recover possession of a certain tract of land. "To support its contention, the plaintiff in error put in evidence, at the trial, an official plat of the government survey of township 26 south, range 31 east, of the Willamette meridian, showing the township rendered fractional by abutting upon the meander line along the south side of Malheur Lake, which plat appears to have been ap-

proved by the land department and filed in the local land
247 office on September 17, 1877. The plat shows lots 3 and 4, section 34, and lots 1 and 2, section 35, as bounded on the north by the meander line of Malheur Lake." The plaintiff in error purchased these lots of the State of Oregon. He contended that he bought in reliance upon the plats and patents which showed the meander line of the lake, and that "such plats and patents must be deemed to conclusively establish that the lake was the northern boundary of the land, so far as the rights of riparian grantees are concerned." The court held, that "while if there was a lake abutting on or to the north of the lots, the plaintiff would take all land between the meander line and the water, and all accretions, it was competent for the defendant to show that there was not, at the time of the survey nor since, any such lake, and to contend that in such a state of facts there could be no intervening land, and no accretion by reliction."

In Niles *v.* Cedar Point Club, 175 U. S. 300, the facts are, in part, as follows: "In the years 1834 and 1835 Ambrose Rice, a deputy surveyor, surveyed and subdivided into sections and quarter sections fractional township 9 south, in range 9 east, and townships 9 and 10 south, in range 10 east, the same being situated in the northern part of Ohio and adjacent to Lake Erie. From his field notes, duly certified to the surveyor general of that land district, the latter prepared a correct plat of the townships, showing the subdivisions thereof, and marking all the actual survey lines and the corners designated by said survey. By the field notes and plat certain sections appear to be fractional, the lines on the north being meandered in a general direction from the northwest to the southeast. The tract to the north of this line was described as "flag marsh" and "impassable marsh and water.

* * * * * * *

"In 1881 John B. Marston, under instruction from the General Land Office, surveyed and subdivided into sections and quarter sections the area marked upon the surveyor general's plat, above
248 referred to, as 'flag marsh' and 'impassable marsh and water.' * * * Disclosing the conditions of these lands, paragraphs 16 and 17 of the statement of facts are as follows:

"At the time of the making of the survey by Ambrose Rice the waters of Lake Erie were above their ordinary stage, and there was more than the usual volume of water standing upon the land in controversy herein and flowing to and upon the same from the large bodies of land now in Ottowa, Wood and Lucas counties, respectively, having their drainage to and through the said premises in controversy herein.

"17. The general character, description and condition of the said land surveyed by said Marston was by him correctly set forth under the title 'General Description' in the field notes of the said survey so as aforesaid by him certified to the Commissioner of the General Land Office.

"That concerning the portion of said survey in township 9 south, range 9 east, reciting, to-wit:

"The surface of that part of this fractional township, comprised in this survey, is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Many parts of it, particularly in the south and west parts, are mown for a kind of coarse hay. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the natural drainage from the woods on the south and west, which, without any well-defined channel, finds its way across the marsh to the lake. Again, in heavy gales of wind it is subject to inundations from the lake, which, upon subsidence of the gale or change of direction in wind, slowly finds its way out again into the lake. It is bounded along the lake by a sand beach averaging 1 chain in width and 3 feet in height.

"That concerning the portion of said survey in township 9 south, range 10 east, reciting, to-wit:

"The surface of this fractional township is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Much of the
249 south part can be mown for marsh hay, being in a measure drained by a canal that has been constructed in the township south. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the drainage from the woods on the south and west, which spread over the entire surface and without any positive channel finds its way to the lake. Again, the township is subject to inundations from the lake during heavy gales of wind, which, upon the termination of the gale or a change in the direction of the wind, slowly finds its way back into the lake."

We should have stated before this that "in July, 1844, (before the Marston survey was made) patents for several of the fractional sections facing on the marsh were issued to Margaret Bailey, under whom the appellant claims; that the patents each recite the number of acres granted, and each states that the tract is a fractional section, 'according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Margaret Bailey.'" After the Marston survey the lands surveyed by him were patented by the United States, and the title so conveyed passed by subsequent deeds to the appellee. The controversy in the case was between the appellant, claiming it by virtue of its contiguity to other lands conveyed to his grantors by the United States before the Marston survey, and the appellee, who claims under a patent of the United States. The appellee's title was sustained.

Mr. Justice Brewer, delivering the opinion of the court, said: "Generally, these meandered lines are lines which course the banks of navigable streams or other navigable waters. Here it appears distinctly from the field notes and the plat that the surveyor, Rice, stopped his survey at this 'marsh,' as he called it. These surveys were approved, and a plat prepared, which was based upon the survey and field notes, and showed the limits of the tracts which were
for sale. The patents, referring in terms to the survey and
250 plat, clearly disclosed that the Government was not intending to and did not convey any land which was a part of the marsh. 'The patent itself does not contain all the particulars of

the survey, but the grant of the lands is recited to be according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General, thereby adopting the plat as a part of the instrument.' * * * In James *v.* Howell, 41 Ohio State, 696, 707, the Supreme Court of Ohio, speaking of these very patents and this marsh said: 'The meander line along the southerly border of the marsh was, in fact, intended to be the boundary line of the fractional sections.' "

Again he says: "It is impossible to hold that the lower courts erred in the conclusion that this marsh was not to be regarded as land continuously submerged, either under Lake Erie, a navigable lake, and in that case belonging to the State of Ohio. * * * or under a pond or other similar body of non-navigable inland waters, and therefore generally the property of riparian owners. It was called a marsh by Rice, the first surveyor, is so styled on the plat, and the conditions as disclosed by the agreed statement indicate that it was a body of low swampy land, partly boggy and partly dry, sometimes subject to inundations from Lake Erie or the overflow of the adjacent streams, but not permanently covered with water.

* * * * * * *

"But it is urged that the fact that a meandered line was run amounts to a determination by the land department that the surveyed fractional sections bordered upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field notes and plat, that that which was lying beyond the surveyed sections was 'flag marsh' or impassable marsh and water.' But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary line which
251 bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, Government or Indian Reservation."

In suits to quiet title the plaintiff is not entitled to recover unless he be in possession, or his title be equitable, or, having the legal title, the land be wild and unoccupied. Mathews *v.* Marks, 44 Ark. 436; St. Louis Refrigerator & Wooden Gutter Co. *v.* Thornton, 74 Ark. 387. The lands in controversy are wild and unoccupied. The possession of them follows the title. Hence, appellant "must succeed, if at all," as in actions of ejectment, "upon the strength of his own title, and cannot rely upon the weakness of his adversary's"; and the burden is on it to show title. Lawrence *v.* Zimpleman, 37 Ark. 644, 647; Kelley *v.* Laconia Levee District, 74 Ark. 202; St. Louis Refrigerator & Wooden Gutter Co. *v.* Thornton, 74 Ark. 387.

Appellant claims the land in controversy by virtue of the contiguity of certain lands, acquired by it from the United States, through the State of Arkansas and other grantors, to what is called "Sunk Lands" and "Cutoff Lake." This "Sunk Lands," from appellant's land on one said to the St. Francis River, a navigable stream,

on the other is there, four and six miles wide. In this area there are over ten thousand acres. The field notes and plat introduced as evidence show the condition of only those sections, and that was on the 30th of May, 1849. John W. Garretson, who surveyed the subdivisional lines and meanders of township 12 north, range 6 east, made this note in his record of surveys:

"May 30th, 1849. The water is at medium stage at this time, and it is utterly impossible to get to the part of the south boundary of section 36 T. 13 N. R. 6 E. which was run by Mr. James M. Danley. The Hatchie Coon Sunk Lands, on the west side of which I closed the meanders in Sec. 2, T. 12 N. R. 6 E., is so deep at this time that it cannot be waded. The east boundaries of Secs. 24 and 25 T. 12 N. R. 6 E., I passed in December, 1848, in a canoe, there was water then on them from 8 to 10 feet deep, and no timber
252 except groups of willow and small cypress trees, such as grow in the main Sunk Lands of the St. Francis River. Mr. Samuel Johnson, it seems, established corners in this lake, as it is called on the north side of the right hand chute of Little River, which right hand chute is very similar to the ground through which the lines, viz: East boundary of Secs. 24 and 25 T. 12 N. R. 6 E. run. I have stated this much in order to show the utter impossibility of running lines or meanders from any corners on the above named boundaries, only at the dryest season of the year. The part of the ground through which east boundary of Secs. 24 and 25 lies is called Cutoff Lake, and the south boundary of section 36 T. 13 N. R. 6 E. could not be reached by Mr. Samuel Johnson, who run the east boundary of T. 12 N. R. 6 E., at the time he run said boundary.

JOHN W. GARRETSON,
Deputy Surveyor."

He indirectly says the lands mentioned could be surveyed at the dryest season of the year, and says that two of the sections had on them "groups of willow and small cypress trees."

The maps introduced as evidence in the hearing of this cause show that fractional sections 6, 7, 18, 19, 30, 35, and 36 form the western boundary of what is called "Sunk Lands," in controversy. James Anthony, an experienced and skilled civil engineer, testified that in 1876 he found that the government meander lines of these sections followed the old steamboat channel, known as the "Old River," which at one time was navigable. The fact that the meander lines followed the channel of Old River is *prima facie* evidence that it was the water line of these sections when the meander lines were run, and was the stream meandered.

The official maps show that Cutoff Lake was the water boundary of fraction sections 35 and 36.

What lay beyond these water lines or boundaries in what is called "Sunk Lands." These sections were surveyed by the government about 1848 or 1849. They were conveyed by the United
253 States to the State of Arkansas by two patents, dated respectively July 29th, 1852, and September 27th, 1858; and the State conveyed all of them, except sections 6 and 7, on the 12th of

June, 1871, to Moses S. Beach, from whom appellant deraigns title. On these various dates there is no direct evidence to show the condition of the lands in controversy? Claiming them by virtue of its riparian rights, the burden is upon appellants, if it succeeds at all, to show their condition. It has failed to do so.

James Anthony, who has known the land since 1874, three years after the State of Arkansas conveyed lands to Moses S. Beach, as before stated, testified as follows:

"Timber grows all over the land; cypress and cotton-wood on the outskirts of that land, both on the river and on the meander line. The center of the land in sections 10, 15, west half of 11, west half of 14, is the highest land in that country, comparing it with both sides of the river, and it is known as 'Gum Island,' and the timber on these lands, this 10, 15, west half of 11 and west half of 14, is oak, some cottonwood, red gum, mulberry, some hickory, and is also covered with a dense undergrowth of spice wood. Between these lands which I have said are known as 'Gum Island' and the land within the meander line, known as "Hatchie Coon," the country is low, swampy and in some places going as wide as a thousand and twelve hundred feet between high land and high land and narrowing down in places to seventy five and one hundred feet wide. I have followed the meander line through 4 and 3 and 2 about which Mr. Biggs and Mr. Odom testified. I made those meander lines. As to the *the* difference in the timber and land on one side of that line and the other, the timber on the 'Hatchie Coon' property is oak and gum, and on the south, in between the two islands, cypress principally and some little cottonwood. I have known that country since 1874. It is known as the 'Sunk Lands.' It is possible at times to walk across that country. The best crossing is through 6, 12, 11, and 10
254 and through 9. There is an old wagon road that goes through there and there used to be a ferry. By 6 I mean section 6 in 12-7."

Asked as to the nature of the country south of this crossing with reference to the possibility of being crossed by team or horses or by foot, the witness said: 'Well, what you call by foot, you mean across this country anywheres, as far as wagons are concerned, you would have to leave these middle sections out, and then you could cross through 35, 34 and 33 with wagon or otherwise.'

"It could not be crossed on foot in the south half of 24 and the south half of 23. By wading you can cross anywhere. There is water in section 23. There may be a little flag in 14. The flag openings commence in the northeast corner of 2; they go down through section 2 to the east half of section 11, and the east half of 14, and from the south line of section 14 they turn due west, running out between sections 14 and 23 and 15 and 22, and is here known as 'Lead Fork Slough.'

In section 26 there is what is known as the 'Scatters.' That is more or less over the section, there are bunches of timber covering 25 or 30 acres, and these bunches of timber are surrounded by flag openings. There may also be a little of that in 25, but very little.

25 is pretty high ground, it is ash and oak. 25 is known as 'Ash Camp.'

This testimony is strongly corroborated by the testimony of other witnesses.

Were the lands in controversy higher in 1874 and since then than they were in 1848, when the United States survey was made, or in 1852 or 1858 when the United States conveyed to this State? T. L. Davis testified that "there is sediment always forming, and after every overflow there is sedimount found, and the land is gradually rising up." F. H. Varner testified that he has resided not far from this land ever since 1844 (four years before any survey was made) that low places, filled with water, are gradually filling up, but
255 further than this the land has not been elevated. John M. Biggs testified that he does not think that the land has filled up or been elevated any at all. That the overflows wash out these low places, and prevent them filling; that nearly everywhere on what is known as "Sunk Lands" on top of the ground that is an ore-like substance in pieces as heavy as a pound to five pounds. This clearly indicates that the lands have not been materially elevated by sediment deposited on top of the ground. If it was, the ore would be covered. The preponderance of the evidence, we think, shows that the elevation of the "Sunk Lands" has not changed.

According to the opinion of the court in Horne *v.* Smith, 159 U. S. 40, and Niles *v.* Cedar Point Club, 175 U. S. 300, we do not think that the appellant acquired the lands in controversy by virtue of his riparian rights, or is the owner thereof, and so decide. Like the land in controversy in Niles *v.* Cedar Point Club, *supra*, they are low swampy lands, checked by bayous, subject to inundation, and reclaimable, to some extent, for agricultural purposes; and not such lands as can be acquired by virtue of riparian rights for fishing and other water purposes.

Appellant offered a letter of the Secretary of the Interior of the United States to the Commissioner of the General Land Office as evidence, and the court refused to receive or allow it to be read. The letter was a mere expression of opinion as to the lands in controversy. There was no contest before his department as to such lands which called for decision. There were no parties before him seeking for an adjudication. There were no issues to be decided. No one interested had an opportunity to be heard. The letter was of no binding force or effect upon any one, and was properly excluded.

Decree affirmed.

McCulloch, J., dissents.

Absent, Hill, C. J.

256 STATE OF ARKANSAS, *In the Supreme Court, ss:*

I, Peyton D. English, clerk of the Supreme Court of the State of Arkansas, hereby certify that the foregoing 255 pages contain a full, true, and complete transcript of the record and proceedings in said court in the cause therein stated, with all things concerning the same.

In testimony whereof I hereto set my hand as clerk and affix the seal of said court, at my office, in the city of Little Rock, Arkansas, this 31st day of March, A. D. 1906.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH, *Clerk.*

257 *Costs in Chancery Court.*

Not certified, to be supplied by Certiorari or by Clerk of the Chancery Court..... $——

Cost in Supreme Court.

Due Appellee Bigelow *et al.* for printing briefs..... $15.00
Costs on Writ of Error to United States Supreme Court for Transcript and Clerk's Fees..... $100.00
Paid by Plaintiff in Error.

[Seal of the Supreme Court of Arkansas.]

Attest with Seal: PEYTON D. ENGLISH, *Clerk.*

Endorsed on cover: File No. 20,209. Arkansas supreme court. Term No. 262. The Chapman and Dewey Land Company, plaintiff in error, *vs.* Charles H. Bigelow, N. P. Bigelow, L. P. Walker and F. H. Hartshorn. Filed April 20th, 1906. File No. 20,209.

FILE COPY.

—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1906.

Office Supreme Court, U. S.
FILED.
APR 2 1907
JAMES H. McKENNEY,
CLERK.

CHAPMAN AND DEWEY LAND COMPANY,
Plaintiff in Error,

vs.

CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER AND F. H. HARTSHORN,
Defendants in Error.

No. 262.

In Error to the Supreme Court of the State of Arkansas.

Abstract and Statement, Specifications of Error, Brief and Argument for Plaintiff in Error.

Sanford B. Ladd,
HENRY D. ASHLEY,
WILLIAM S. GILBERT,
DENTON DUNN,
ROBERT S. RODGERS,
Counsel for Plaintiff in Error.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1906.

CHAPMAN AND DEWEY LAND COMPANY,
Plaintiff in Error,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER AND F. H. HARTSHORN,
Defendants in Error.

No. 262.

ABSTRACT AND STATEMENT.

This is a suit in equity to remove a cloud from the plaintiff in error's title to certain lands described in the complaint (and hereinafter described) and for that purpose to have declared void, invalid and of no effect, the several conveyances hereinafter referred to, under which the defendants in error claim title. The suit was brought by plaintiff in error in the Chancery Court of Poinsett County, Arkansas, January 29th, 1903, and after decree on September 6th, 1903, dismissing complaint, plaintiff in error took the suit by appeal to the Supreme Court of Arkansas, where decree below was affirmed on January

6th, 1906, whereupon plaintiff in error sued out a writ of error from this court. (Transcript, p. 1.) The lands in controversy and constituting the *locus in quo* are:

(1) All of the lands, as they are now formed and at present exist, which are embraced within that space marked and shown as water in the United States Government Survey and plat (hereinafter referred to) of fractional Township 12 North, Range 6 East, in Poinsett County, Arkansas, and which lie east of the main channel of the St. Francis river, as said river is marked and designated on the plat of what is known as the Anthony Survey, being a private and unofficial survey made in the year 1900 by one James Anthony, the plat of which is recorded in the office of the Recorder of Deeds of said Poinsett County, and is hereinafter more specifically referred to. Said lands have never been surveyed by authority of the United States Government, and on said plat of said so-called Anthony Survey, said lands are marked "Bigelow Bros.," except a small tract marked "School Land," and marked on said Anthony plat as a part of Section 16, which is not claimed by defendants in error and is therefore to be excepted from the lands in controversy.

(2) Also all of the land as it is now formed and at present exists, lying west of the United States Government meander line of fractional Sections 18 and 19, in Township 12 North, Range 7 East, embraced within that space marked and shown as water in the United States Government Survey and plat of Township 12 North, Range 7 East, in Poinsett County, Arkansas, and appearing on said Anthony plat hereinbefore referred to, marked "Bigelow Bros.," and designated on said Anthony plat as containing 503.03 acres adjoining the Government meander line of Section 18 and 230.12 acres adjoining the Government meander line of Section 19.

See transcript, page 138, for Anthony plat; for certified copies of United States Government plats, see transcript, pp. 33 and 34.

The lands now formed and at present existing immediately adjoining on the west of the United States

Government meander line of fractional Sections 6 and 7, Township 12 North, Range 7 East, and marked "Chapman & Dewey" on said Anthony plat, and shown on said plat as parts of Sections 6 and 7, Township 12 North, Range 7, not being claimed by the defendants in error, are not in controversy in this case.

All of said lands are wild, unimproved and unoccupied.

COMPLAINT.

The complaint (transcript, pages 22 to 31) sets up a title in the plaintiff in error under the Act of Congress of September 28, 1850, generally known as the "Swamp Land Grant," and the several conveyances and matters of record in the complaint mentioned, as follows, to-wit:

Selections by the State of Arkansas, approval thereof by the Secretary of the Interior of the United States and two patents from the United States to the State of Arkansas, all under said Act of Congress of September 28, 1850, conveying all surveyed sections and parts of fractional sections in fractional Township 12, North of the base line, in Range 6, East of the 5th principal meridian, containing 7,236.78 acres, and all surveyed sections and parts of fractional sections in Township 12 North, in Range 7 East, containing 13,815.67 acres: Said patents being dated respectively July 29th, 1856, and September 27th, 1858; both said patents being in the usual form and being specifically stated to be "according to the official plats and survey of said lands returned to the General Land Office," and containing *habendum* clauses in the usual form, as follows: "together with all the rights, privileges, immunities and appurtenances thereto belonging."

For said selections and approvals see pages 48 and 49 of transcript; for said patents see pages 35 and 36.

Surveys made prior to the above mentioned trans-

fers under direction and by authority of the United States Government and the field notes of said surveys and plats showing the lines of the sections, subdivisions and area thereof, the configuration of the land and water and revealing fully all the details of said survey, duly returned to the Surveyor General at the General Land Office in Washington by the surveyors who made said surveys. The complaint sets out that the said United States survey showed no land whatever in the greater part of Township 12 North, Range 6 East, and describes in detail the manner in which fractional sections and parts of sections in said Township 12 North, Ranges 6 and 7 East, patented as aforesaid by the United States to the State of Arkansas and by the State of Arkansas to Moses S. Beach, from whose heirs plaintiff in error acquired the same, are meandered upon the water by said survey. The body of water on which said sections and parts of sections are meandered is on said Government plats and in said field notes designated as "Sunk Lands," "St. Francis River Sunk Lands," "Hatchie Coon Sunk Lands" and "Cut-Off Lake."

For certified copies of said original plats on file in the General Land Office, see transcript, pp. 33 and 34. For said field notes of Sections 2, 35 and 36, Township 12, Range 6, see transcript, pages 37 to 40; Sections 4 and 3, Township 12, Range 6, pages 44 to 46; Sections 7, 18 and 19, Township 12, Range 7, pages 40 to 43; Section 6, Township 12, Range 7, page 46; Section 30, Township 12, Range 7, page 43.

Patents from the State of Arkansas to Moses S. Beach, dated June 12, 1871, conveying to him all of the land in fractional Township 12 North, Range 6 East, lying east of what is now the main channel of the St. Francis river and meandered and abutting on what was water at the date of the United States surveys hereinbefore referred to, as appears by reference to the certified

copies of the official plats of said surveys hereinbefore referred to and filed with the transcript.

Conveying also all of Sections 18, 19 and 30, Township 12 North, Range 7 East, the same being meandered on and made fractional by said body of water. Also conveying Section 36, Township 13 North, Range 6 East. The above mentioned conveyances from the State of Arkansas to Moses S. Beach are embraced in three patents (transcript, pages 50 to 53). All of said patents are in the usual form, refer to the Swamp Land Grant of September 28, 1850, and contain *habendum* clauses in the usual form, "with the appurtenances and hereditaments."

Deeds conveying all said lands from the widow and all the heirs of Moses S. Beach (who after receiving said patents had died intestate) to William B. Beach and from William B. Beach and wife to Chapman & Dewey Land Company, the plaintiff in error herein.

For these deeds see transcript, pages 53 to 60.

(It is admitted in the answer of defendants in error that plaintiff in error has title to Section 36, Township 13 North, Range 6 East, by the same chain of conveyance last above mentioned. Transcript, page 78.)

As to Sections 6 and 7, Township 12 North, Range 7 East, as shown on said United States Government plats, the plaintiff in error in its complaint alleged and afterward by undisputed record evidence showed that it had acquired these sections under tax sales made under and by virtue of an Act of the Legislature of the State of Arkansas, generally known as the "Overdue tax law," and by deeds from the proper officials under said tax sales to the grantors of the plaintiff in error; also by other tax sales for delinquent taxes at which plaintiff in error was the purchaser and by deeds thereunder to the plaintiff in error and by decrees of the Chancery Court of said Poinsett County confirming the title to said

Sections 6 and 7 in the plaintiff in error, also in its grantors. All of the deeds and decrees under which plaintiff in error acquired the title to this particular land will be found in the transcript, pages 62 to 76.

The complaint and exhibits and admissions in the answer show an undisputed title in the plaintiff in error to all the fractional sections of land lying east of the present main channel of St. Francis river, and, as shown on said United States Government plats, meandered and abutting on the body of water hereinbefore referred to.

In the year 1900, as set out in the complaint, one James Anthony, a surveyor then in the employ of the Board of Directors of the St. Francis Levee District, under grant from which Board of Directors the defendants in error claim the lands in controversy, undertook to survey the region shown as water on the United States plats and surveys hereinbefore referred to and upon which the fractional sections of land patented by the United States to the State of Arkansas under said Swamp Land Grant of September 28, 1850, and by the State of Arkansas to the grantors of the plaintiff in error abut and are meandered. Such unofficial survey definitely locates the main channel of the St. Francis river. See plat, page 138 of transcript, introduced in evidence by defendants in error.

On the 11th day of October, 1900, and on the 11th day of January, 1901, said Board of Directors of said St. Francis Levee District attempted to convey to C. H. Bodkin all the region shown as water on the United States Government plats and surveys of Township 12 North, Range 6 East, hereinbefore mentioned, lying east of the main channel of the St. Francis river, as definitely located on said plat of the unofficial survey of said James Anthony hereinbefore referred to, except said small tract marked "School Lands" on said Anthony plat; and all the region shown as water on the United States Govern-

ment plats and surveys of Township 12 North, Range 7 East, lying west of the meander lines of fractional Sections 18 and 19, in said last named Township and Range (see page 138, transcript); and by virtue of *mesne* conveyances the defendants in error claim title to the lands in controversy.

This constitutes the cloud sought to be removed in this case from the fee simple title of the plaintiff in error to the lands in controversy, as riparian owners of all the lands shown meandered and abutting on said body of water (the *locus in quo* in this case) on said United States Government plats and surveys, and for which plaintiff in error's grantors were grantees under patents from the United States and the State of Arkansas.

ANSWER AND CROSS-COMPLAINT.

The defendants in error in their answer (transcript, pages 76 to 83), admit the title of the plaintiff in error to all the surveyed fractional sections and parts of sections in Township 12 North, Range 6 East, lying east of the present main channel of the St. Francis river, as hereinafter located, as said fractional sections and parts of sections are shown on the said United States Government surveys, and admit that the title of plaintiff in error thereto was acquired by it under and by virtue of the selections by the State of Arkansas, approvals thereof by the Secretary of the Interior, patents from the United States to the State of Arkansas, patents from the State of Arkansas to Moses S. Beach, and the conveyances thereafter made, all as set out in the complaint. Defendants in error admit a similar title in plaintiff in error to fractional Sections 18, 19 and 30, Township 12 North, Range 7 East, and Section 36, Township 13 North, Range 6 East, by the same chain of conveyances above mentioned. Defendants in error, however, deny the plain-

tiff in error's title to fractional Sections 6 and 7, Township 12 North, Range 7 East.

The defendants in error in their said answer, while admitting the selections by the State of Arkansas, approvals thereof by the Secretary of the Interior and patents to the State of Arkansas, allege that said Townships 12 North, in Ranges 6 and 7, were "granted by the United States to the State of Arkansas as a whole, whereby all land within the borders of said townships became the property of the State of Arkansas, regardless of whether it had been surveyed or not."

Defendants in error admit in said answer that prior to said transfer by the United States to the State of Arkansas, the surveys referred to in the complaint were made under the direction and authority of the United States Government and were, with the field notes thereof, returned to the Surveyor General at the General Land Office in Washington; but they deny that said surveys and the plats thereof showed no land in the greater part of said Township 12 North, Range 6 East, and allege that the record of the survey shows land where the plaintiff in error alleges no land is shown. They allege that at the time the surveys were made, the record thereof shows that the water was high, but that it could be surveyed in dry seasons, and contend that the words "Sunk Lands" on that part of the plats of said survey embracing the region in question, indicated that the "place is not a body of water, but a body of land, sunk."

It is admitted in said answer that the region in question is indicated on the Government plats in the same way that a body of water is usually indicated, but it is alleged that the record of said survey shows it to have been land at that time, and not water. The answer further alleges that in making said survey the surveyors were easily mistaken as to the location of St. Francis

river, and that it is manifest that in some cases they would call for St. Francis river when all they could have meant was that they had reached water, which was the overflow from St. Francis river, or some small bayou or cut off of said stream, "the fact being that the so-called 'sunk lands' are a body of lands lying on both sides of the St. Francis river, sunk, and in the rainy season easily overflowed, and at the time of the survey the meandered lines were run around this body of sunk and overflowed lands as if it had been a body of water, but at the same time the field notes showed that it was not a body of water, but land covered with water, and also bearing trees and vegetation, willow and cypress."

The answer further alleges that the meandered lines, as run in said surveys, "through" the surveyed fractional sections and parts of sections acquired by the plaintiff in error, as set out in its complaint, were run as *boundaries*, and were not run for the purpose of finding the number of acres in the several subdivisions for which the purchasers should pay.

The answer further admits that there is now outside of and beyond the original lines of said surveys above set out and east of the main channel of the St. Francis river, a considerable body of land adjacent to each of the tracts before mentioned (meaning the fractional sections and parts of sections acquired by the plaintiff in error as before stated), but denies that such land forms any part of said tracts, and denies that any of said land accrued to plaintiff in error. (Tr. 79).

The answer admits that "in the year 1900 James Anthony, a surveyor in the employ of the Board of Directors of the St. Francis Levee District, undertook to survey the lands which lay outside of and beyond the lines run by the Government Surveyor, and defendants in error say it is true that James Anthony did survey

said lands, being the lands not subdivided into sections and parts thereof by the Government Surveyors, because of the water then covering them, and such survey made by James Anthony and field notes and plats, defendants admit, are filed in the office of the Recorder of Poinsett County, and these defendants admit *that such survey and plats show the main channel of the St. Francis river, definitely.*"

The answer admits the execution of the alleged deeds under which the defendants in error claim title to the lands in controversy as alleged in the complaint, and which plaintiff in error claims constitute a cloud on its title and denies that the plaintiff in error has any title to the said lands by virtue of the patents and conveyance and the Government Survey, plats and field notes (being the lands surveyed as aforesaid by James Anthony), and denies that the alleged deeds under which defendants in error claim title thereto are clouds on any title of the plaintiff in error.

The answer admits that they have posted notices on said lands warning all persons to desist from trespassing thereon.

The defendants in error then proceed to set up as matter of cross-complaint the alleged title of defendants in error to the lands in controversy, which alleged title they state to be as follows:

That "they were granted to the State of Arkansas by an Act of Congress of the United States, approved on the 28th day of September, 1850, an Act known as the Swamp and Overflow Act;" that under said act the Secretary of the Interior included in a list of swamp and overflowed lands transmitted to the Governor of Arkansas, the whole of Township 12 North, Range 6 East, and Township 12 North, Range 7 East, and that a patent for said township was granted to the State of Arkansas; whereby, it is alleged in said cross-complaint, the

legal title to all lands in said townships, whether then subdivided into sections or not, passed to the State of Arkansas and remained in said State until the year 1893, in which year, it is alleged in said cross-complaint, said title became vested in the Board of Directors of the St. Francis Levee District by reason of an Act of the Legislature of the State of Arkansas granting to the said Board of Directors of the St. Francis Levee District all lands within said District the title to which was in the State of Arkansas; "that this act of donation by the Legislature of the State of Arkansas went into effect on the 29th day of March, 1893, and thereby the legal title to the *unsurveyed* lands in Township 12 North, Range 6 East, and Township 12 North, Range 7 East, became vested in the Board of Directors of the St. Francis Levee District."

The cross-complaint then alleges that the Board of Directors of the St. Francis Levee District on October 11th, 1900, conveyed said lands to C. H. Bodkin and that under and by virtue of the chain of conveyances previously hereinbefore referred to the title which the defendants in error now claim to said lands passed to them.

The prayer of the cross-complaint is that Chapman & Dewey Land Company be enjoined from further impleading the cross-complainants in any cause wherein Chapman & Dewey Land Company, or any one holding under them, shall allege title to the lands involved.

REPLY.

The reply of plaintiff in error to the answer and cross-complaint (transcript, pages 83 to 85) is a general denial of new matter alleged in the answer, and further specifically denies that the defendants in error are the owners of the unsurveyed lands attempted to be conveyed to C. H. Bodkin by the St. Francis Levee District; denies that said unsurveyed lands were granted to the

State of Arkansas by the United States by virtue of the Swamp Land Grant of September 28th, 1850, as alleged in the cross-complaint; denies that said unsurveyed lands were ever included in the list of swamp and overflowed lands transmitted to the Governor of the State of Arkansas by the Secretary of the Interior; denies that the United States ever issued a patent to the said State of Arkansas for said unsurveyed portions of said Township 12 North, Range 6 East, and Township 12 North, Range 7 East; denies that by the grant from the United States to the State of Arkansas of the surveyed lands in said townships the legal title to the unsurveyed portions of said townships passed to the State of Arkansas as swamp lands under said Act of Congress, and denies that the title to such unsurveyed portions remained in the State of Arkansas until the year 1893.

It is further alleged in said reply that whatever rights the State of Arkansas acquired to said unsurveyed parts of said township under and by virtue of the patents from the United States Government of the surveyed portions of said townships, passed to the said State as riparian owner of the surveyed lands properly meandered on the permanent bodies of water, covering at the date of said Act of Congress of September 28, 1850, and at the date of the surveys and plats made pursuant to said Act, the unsurveyed portions of said townships now owned by plaintiff as in its complaint alleged, and that all the right, title and interest of said State in and to said unsurveyed portions of said townships as such riparian owner passed from said State to the grantees of the State in the patents conveying said surveyed lands from the State, and under and by virtue of those patents and the riparian rights thereto appertaining and the *mesne* conveyances thereunder, passed to and now belong to the plaintiff in error.

The said reply admits the creation of the Board of

Directors of the St. Francis Levee District by Act of the Legislature of the State of Arkansas in 1893, but denies that by virtue of the provisions of any act of said Legislature any title to the unsurveyed portions of said townships in controversy in this case passed to said Board of Directors, such title having long before 1893 passed from the State of Arkansas to the plaintiff in error's grantors, and by *mesne* conveyance to the plaintiff in error as riparian owner, by virtue of patents referred to in the complaint.

The reply further denies that the conveyance from said Board of Directors of St. Francis Levee District to C. H. Bodkin and subsequent *mesne* conveyances to defendants in error conveyed any title to the lands in controversy, but alleges that such conveyances simply constitute a cloud on plaintiff in error's title.

EVIDENCE OF PLAINTIFF IN ERROR.

The Bill of Exceptions (Transcript, page 142, *et seq.*) shows the introduction by the plaintiff in error without objection of the selections and approvals, patents, conveyances, Government plats, field notes, decrees, and all the matters of record as alleged in its complaint, under and through which it derives its title to the lands described in said complaint.

The Bill of Exceptions also shows the introduction of the depositions of Peters, Davis and Varner, taken in another case for the purpose of showing the present condition of the *locus in quo* in controversy and not for the purpose of showing or even as tending to show by inference, the condition of the *locus in quo* at the date of the United States surveys and plats, or at the date of the Swamp Land Grant, namely September 28, 1850; and therefore plaintiff in error specially excepted from offer and moved to strike out volunteer statements of witness Peters beginning "I want to say further" to

"Did you find [illegible]" (Transcript, p. 93), being volunteer statement of a mere opinion, not responsive to any question, and incompetent, immaterial and irrelevant to any issue in this case, and because it tended to contradict by volunteer oral expression of opinion the United States plats and surveys and the ruling of the Secretary of the Interior thereon (Transcript, p. 85).

At this point it is stated by counsel for both parties that it was originally agreed that either party might read these depositions, but neither party claims the right under such agreement to urge incompetent testimony on the court. (Transcript, p. 144.)

The plaintiff in error does not rely on these depositions and omits any attempt to abstract them here, their purpose being merely to show the present condition of the region in question not affecting what the plaintiff in error conceives to be the main issue in this case. The complaint relied on title both by "accretion and reliction" and "by riparian rights" flowing from the United States patents into which the plats are to be read, state patents of like character with *mesne* conveyances to plaintiff in error. The unsurveyed region claimed by plaintiff in error up to channel of St. Francis River being unnavigable, the accretion and reliction allegations in complaint become unimportant and the evidence to show present conditions and gradual filling up also become unimportant. Plaintiff in error claims by riparian right the bottom to the channel of the St. Francis River, wet or dry, hence there is no occasion to abstract depositions of Peters, Davis and Varner as to present conditions and gradual filling up.

For Peters's deposition, see transcript, pages 86 to 96; for Davis's deposition, pages 96 to 108; for Varner deposition, pages 108 to 110.

For agreement admitting certain uncontested facts see page 110, transcript.

The Bill of Exceptions further shows that the plaintiff in error offered in evidence the finding and opinion of the Secretary of the Interior of the United States, dated November 17, 1902, the authenticity of which was admitted, and which was filed and made a part of the record in this cause, and is in this abstract fully set out, as follows: (See transcript, pages 111 to 115).

The plaintiff then offered in evidence the opinion of the Secretary of the Interior of the United States, the authenticity of which is admitted, as follows: (See transcript, pages 111 to 115.

RULING OF SECRETARY OF INTERIOR.

E. F. B.

2469-1902. November 17, 1902.

The Commissioner of the General Land Office.

SIR:—The Department is in receipt of your letter of June 2, 1902, relative to an alleged trespass upon what you term the unsurveyed lands in the northeastern part of Arkansas, known as the "sunk lands of the New Madrid earthquake."

The alleged trespassers are persons who claim to have purchased said lands from the Board of Directors of the "St. Francis Levee District," created and organized by the act of the Legislature of Arkansas of February 15th, 1893, which fixed the boundaries of said district and empowered and made it the duty of said Board to levy annually a tax on all lands in said levee district, be assessed according to the increased value or betterment estimated to accrue from protection against floods from the Mississippi river by reason of the construction of levees. At the same session the Legislature of the State passed an act (March 29, 1893) donating to said district, for the purpose of building and maintaining levees, all the lands of the State lying within said districts, except the sixteenth section, and all right, title or interest that the State had or might acquire to any lands within said district, except the sixteenth section, during the five years immediately after said act, by reason of forfeiture for taxes.

A special agent of your office states in his report that in an interview with the officers of said Board he learned that it claimed title to the lands in question under said act of March 29, 1893, and also bases its claim upon letters from your office and from the Secretary of the Interior, declaring in effect, that if the unsurveyed lands, known as the "Sunk Lands," were, at the date of the township surveys covered by bodies of water and were afterwards uncovered by the recession of the waters, such lands would belong to the owners of the adjacent lands as riparian proprietors, and the United States would have no authority to survey and dispose of them, assuming that the lands contiguous to and surrounding the meandered waters have been disposd of. The special agent expresses the opinion that there is no doubt that at the time of the township surveys these lands were simply covered by the overflow of the Mississippi river, and that they must be classed as agricultural lands, and not as covered by permanent bodies of water and therefore subject to State or riparian ownership; that "some of these lands are five miles wide and are covered with the finest timber, which is exceedingly valuable, and when cleared will make fine cotton and corn plantations and become some of the most valuable ones in the State." You recommend that steps be taken to enjoin the St. Francis Levee Board from disposing of any of said lands and that the purchasers of the lands from said Board be enjoined from cutting any timber thereon.

The lands in question are in Township 11 to 16 North, inclusive, in Range 6 East, and in Township 12 to 17 North, inclusive, in Range 7 East, which were surveyed at different times from 1841 to 1849. The field notes and the plats of those surveys show that what are now reported to be unsurveyed lands were at the date of the township surveys covered by permanent bodies of water that were meandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 to 15 feet. A large portion of the surveyed lands lying along the meander lines are designated in the field notes as overflowed and unfit for cultivation.

The letter of your office and the letter of the Sec-

retary of the Interior referred to by the special agent as a basis of the claim of the Levee Board, were written in response to a communication from the chief engineer of the St. Francis Levee District, of June 25, 1894, to the Secretary of the Interior, in which, referring to the fact that the unsurveyed part of said townships consisted of lakes and swamps, he says:

The numerous overflows since then have filled up these lakes and swamps very much, and changed largely the general features of the country. To such an extent has this filling up been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water. This filling up increases the possibility of drainage, and recent cross-sections of that basin show that the whole can be drained into the St. Francis and Little rivers.

He stated that he was informed that the title to these unsurveyed lands yet remains in the Government, and as the drainage of the lakes in the St. Francis basin is necssary to the maintenance of the levees, he suggested that the lands be donated to the State or the Levee Board for the purposes stated.

Said letter having been referred to your office, it was stated in response thereto, by letter of August 25, 1894, that "when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain and beds of inland non-navigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States, but to the riparian owners." The Department, by letter of November 20, 1894, concurred in the views of your office and stated that from the facts then appearing the Government had no jurisdiction over said lands and no power to direct their survey.

It appears from a communication by the chief engineer of the St. Francis Levee District, dated September 3, 1901, set forth in your letter, that this matter was brought to the attention of the Department in 1894,

with a view to having the lands surveyed and disposed of by the Government if it still holds the title. The purpose of the board was to have the title of the Government divested, if it had any, so that the lands might pass into private ownership in order that they may be subject to the tax for their proportion of the cost in constructing levees. He says:

If the General Government has no jurisdiction of these unsurveyed lands and does not claim any, and if a survey of them cannot therefore be made by the Government, then it is the purpose of our Board to have them surveyed and sell them or quit-claim them and place them on our levee tax books, so that they may be taxed for levee purposes and therefore pay their proportion towards the construction of the levees and drains by which they have been and are being so greatly improved and benefited. If the General Government will survey them so that we can tax them when parties buy them from the Government or homestead them, then our purposes will be equally accomplished.

It is not questioned that the portions of said townships which are represented on the plats of survey as bodies of water are now valuable lands. On the contrary, the chief engineer states that he knows of his own personal knowledge that farms of great value are now cultivated in the very bottom or lowest places of some of these unsurveyed lands, but he adds: "All of this conversion of these low lands is of course due to our levees keeping the overflow out of the low lands, and our drainage systems which afford them drainage."

It may be mentioned in this connection that by the agreement between the United States and the State of Arkansas, entered into February 23, 1895, and ratified by the Act of April 29, 1898 (30 Stat., 367), the State of Arkansas relinquished to the United States all claim to the swamp lands in said State, except such as had been patented, approved or confirmed to the State at the date of said agreement, but said Act of April 29, 1898, confirmed the title of all persons who had purchased from the State any unconfirmed swamp land and had received a deed for the same. As these lands had not been patented, approved or confirmed to the State, and

had not been sold by the State to any person, except perhaps one tract, which it is alleged had been sold prior to said agreement, the "St. Francis Levee District" can not sustain its claim to said lands under the swamp land grant, and unless the title of the Government has been otherwise divested, or its right to said lands was concluded by the approval of the township surveys and the disposal of the adjacent lands the action of the St. Francis Levee District in disposing of said lands is without warrant or authority and steps should be taken to enjoin it from disposing of the same and its purchasers should be enjoined from cutting the timber thereon.

Therefore the conditions existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depredations on these lands. The returns of the township surveys show upon their face that what are now alleged to be unsurveyed portions of said townships were then actually bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or in any of the papers submitted therewith, to impeach those returns as to the physical conditions of land and water at that time.

The opinion expressed by the Secretary of the Interior in his letter of November 30, 1894, herein referred to, was based upon the decision of the Supreme Court in the case of *Hardin* v. *Jordan* (140 U. S., 371), assuming that there was no mistake in the surveys and that the lands contiguous to the meander line had been disposed of. In the case of *Hardin* v. *Jordan* the doctrine was clearly announced that the right and title of a grantee from the United States of public lands bordering on non-navigable lakes and ponds, extends to the center of the lake or pond if the Government has not reserved any right or interest that might pass by the grant or done any act showing an intention to make such reservation. The rights of riparian proprietors are controlled by the respective laws of the States, but that does not affect the question as to whether the General Government is, by disposing of the public lands bordering

on non-navigable lakes and ponds, properly meandered, concluded from afterwards exercising jurisdiction over said lands and from disposing of the same. Upon this question the court said:

It has never been held that the lands under water, in front of such grants, are reserved to the United States, or that they can be afterwards granted out to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render titles uncertain, and to derogate from the value of natural boundaries, like streams and bodies of waters.

While the United States does not, by the approval of the survey, and the disposal of lands contiguous to the meander line, part with its title to lands that were erroneously omitted from survey, yet, as stated in the decision of the court in *Hardin* v. *Jordan, supra*, there should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian lands. It appears upon the face of the township plats of survey, and from the field notes thereof, that the lands in question were at the dates of the survey covered by bodies of water, which were properly meandered as such, and it does not appear from the report of the special agent that he has any evidence at hand to support his opinion that said lands at the time of survey were simply covered by overflow from the Mississippi river, nor is there anything shown by your letter or by the papers submitted therewith that tends to impeach the returns of the township surveys.

More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the Department in 1894, when the request of the St. Francis Levee District to have said lands surveyed was refused.

The action of the Board of Directors of the St. Francis Levee district in exercising control over said lands appears to have been prompted by the disclaimer

of jurisdiction and authority over them by the Government, as expressed in the letters of your office and of the Department, above referred to, and such disclaimer was based upon the information furnished by the records of your office, which show that the authority and jurisdiction of the Government over said lands was terminated by the approval of the surveys and the sale of the lands along the meander lines. It does not appear from anything in the records whether the body of water that once covered the lands in question was navigable or not, but the result would be the same in either case. If it was a non-navigable body of water the riparian right vested by the sale of the lands along the meander lines by the Government. If it was a navigable body of water the title of the bed thereof passed out of the United States upon the admission of the State to the Union, and was thereafter subject to the laws of the State. The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the Government over the lands in question having thus terminated, the action of the Department of November 30, 1894, is adhered to, and no further or other action will be taken with reference to said lands.

The papers are herewith returned.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

The Bill of Exceptions further shows the proceedings relating to this offer in words as follows: (Transcript, pp. 145 to 147.).

"Mr. Norton, on behalf of defendants, objects to the introduction in evidence of the proceedings before the Secretary of the Interior as set forth in the above document; and objects to the introduction in evidence of the finding of the Secretary of the Interior."

"Mr. Ashley for the plaintiff states that the above decision of the Secretary of the Interior is *res adjudicata* on the question of fact as to whether or not the *locus in*

quo was a body of water at the date of the Swamp Land Grant, and states that it is held by the courts of the States and of the United States that such decision is conclusive as to the character of the land. The Secretary of the Interior decided on the application of the grantors of the defendants, the St .Francis Levee District, as to this identical land, that it was at the date of the Swamp Land Grant, water, and that it went to the riparian grantee. That the State of Arkansas was riparian grantee, and that the grant of the State was identical with the grant of the United States to the State. Mr. Ashley, for the Plaintiff, asked this ruling of the Secretary of the Interior, holding that these unsurveyed portions of Township 12 N., Ranges 6 and 7 E., were permanent bodies of water at the date of the Swamp Land Grant, and that they belong to the riparian owners of sections properly meandered on such permanent body of water, be considered as a final decision of the question of fact that they were at the date of the grant covered by a permanent body of water, not as swamp lands but by riparian rights."

"The court overruled plaintiff's offer for that purpose, stating that he considered it a question for the court, and that to so accept the decision of the Secretary of the Interior would be to permit the Secretary to invade the province of the court. To which ruling of the court the plaintiff at the time excepted and its exceptions were noted of record."

"Mr. Ashley for plaintiff argues that the United States has the right to say through its Secretary that it does not grant land as swamp land, but by riparian rights. The court rules that the decision of the Secretary of the Interior is simply a ruling by the department that the United States makes no claim to the land. To which ruling of the court the plaintiff then and there excepted, and its exceptions were noted of record."

"Mr. Ashley for plaintiff argues that the decision of the Secretary of the Interior was a finding on the question of fact that the land in controversy was at the date of the grant covered by a permanent body of water, and that oral evidence is not admissible to show that it

was not a body of water in 1850; and contends that the ruling of the Secretary of the Interior as to whether it was land or water at that date is final. Plaintiff specifically requests that the decision of the Secretary of the Interior be admitted in evidence for the purpose of showing that, in regard to the identical lands in controversy, the Secretary of the Interior of the United States has passed on the question of whether or not it is swamp land, and has held that at the date of the grant to the State it was a permanent body of water and, therefore, such decision is on this question in the nature of *res adjudicata.*"

"The court overrules this offer, and rules that the decision of the Secretary of the Interior is not admissible in this case, and that the Secretary of the Interior could not make a decision that would be binding upon the State; that the Secretary of the Interior could not make a binding decision in a contest between the State and a riparian owner as to what was the condition at the time of the Swamp Land Grant, and that the Secretary could not bind the State by an *ex parte* opinion. To this rulinig of the court the plaintiff excepts at the time, and its exceptions are noted of record."

"Mr. Ashley for plaintiff urges that numerous decisions hold that the Secretary of the Interior may make a ruling on such a question of fact, and that oral testimony in such cases is admissible only where the Secretary has failed or refused to make a ruling. The court rules finally that it will not admit in evidence the decision of the Secretary of the Interior as *res adjudicata* on the question of whether or not in 1850 the property in controversy was a body of land, or water, stating that he does not think the Secretary of the Interior has the power to decide the question. To which ruling the plaintiff at the time excepted, and its exceptions are noted of record."

"Plaintiff then offered in evidence said decision of the Secretary of the Interior hereinbefore filed (about the genuineness and authenticity of which there is no question made by counsel; and which is admitted to be genuine and authentic) to show that said Secretary has decided that these fractional sections having been mean-

dered, according to the plats, upon blank, unsectionalized portions of the townships, as shown by the Government plats, such blank, unsectionalized portions are not surveyed but are unsurveyed, and, furthermore, because in such opinion the Secretary of the Interior holds that these unsectionalized portions have never been surveyed, and that they never having been patented, or surveyed or selected, they could not pass to the State of Arkansas, as swamp land."

"Plaintiff further offers said decision of the Secretary of the Interior in evidence for the purpose of showing that the land in controversy has never been surveyed under the direction of the United States Land Department."

"Plaintiff offers it for the further purpose of showing that in making surveys of public lands the United States Land Department does not treat as surveyed lands portions of townships which appear upon the plats of such surveys as unsectionalized, which are not subdivided into legal subdivisions, and which are meandered, on such township plats as bodies of water."

"Plaintiff offers said decision for the further reason that the selection, approval, confirmation, platting and patenting of United States Government Lands are the concurrent action of the Federal and State officers having the authority, and that the Secretary of the Interior has in such opinion passed upon the question of what were in fact at the date of the Swamp Land Grant in 1850, swamp and overflowed lands within these townships."

"Plaintiff offers said decision of the Secretary of the Interior for the further reason that in it said Secretary of the Interior says: "As these lands have not been patented, approved or confirmed to the State, and have not been sold by the State to any person." Such language being a finding that the said lands have not been patented, approved or confirmed to the State."

"The court overrules the offers of said plaintiff, and excludes said decision of the Secretary of the Interior from evidence. To which ruling the plaintiff then and there excepted, and its exceptions were noted of record."

Plaintiff in error thereupon rested.

TESTIMONY OFFERED BY DEFENDANTS IN ERROR.

Defendants' oral evidence consisted of the depositions of witnesses John M. Biggs, Charles S. Odom and James Anthony.

For deposition of Biggs see transcript, pages 117 to 126; deposition of Odom, pages 126 to 128; deposition of Anthony, pages 128 to 137; contract between Anthony and Board of Directors of St. Francis Levee District, page 138; plat of the survey of lands in controversy, made by James Anthony in the year 1900, follows page 138 in the transcript.

The plaintiff objected to the depositions of Biggs, Odom and Anthony "if offered for the purpose, and in so far as they attempt, by inference or otherwise, to impeach or contradict the official plats and field notes of surveys made under the general direction of the General Land Office of the United States, or to attack the finality or correctness of the ruling of the Secretary of the Interior to the effect that the unsurveyed lands in controversy were, at the date of the Swamp Land Grant, covered by a permanent body of water and that the surveyed fractional sections and parts of sections owned by plaintiff were, in such surveys and plats, properly meandered on such permanent body of water; oral evidence of witnesses being incompetent for such purpose in this case, because the Secretary of the Interior has not only not failed or refused, but has actually officially passed on such question of fact, especially as no one of the witnesses claims to have known anything about the *locus in quo* earrlier than 1874, and such oral testimony of conditions existing since 1874 is incompetent, immaterial and irrelevant for the purpose of attempting to show condition of *locus in quo* September 28, 1850."

(See transcript, page 116.)

"The court thereupon overruled the objection of plaintiff and permitted the introduction of said deposi-

tions of Odom, Anthony and Biggs; to the overruling of which objection and the introduction of such evidence the plaintiff at that time excepted and asked that its exceptions be noted of record, which was done."

(See Bill of Exceptions, pages 147 and 148, transcript.)

Mr. Norton, for defendants, then read in evidence, over the objections and exceptions of plaintiff, as above stated, the deposition of John M. Biggs, Charles S. Odom and James Anthony.

(See Bill of Exceptions at page 148 of transcript.)

The plaintiff specially objected to part of Anthony's deposition, on page 130 of transcript (being page 24 of the original deposition), and from thence to the end of the direct examination, and moves to strike it out, in so far as it is attempted to show by oral evidence, the condition of the *locus in quo* at the date of the Swamp Land Grant September 28, 1850, especially in view of the fact that the witness had already testified that he didn't know anything about it earlier than 1874. Which objection and motion was by the court overruled, to which ruling the plaintiff at the time excepted, and asked that his exceptions be noted of record.

(See Bill of Exceptions at page 148 of transcript.)

The plaintiff-in-error deems the said depositions of Biggs and Odom of no importance or relevancy to the issues in this case and therefore omits any attempt to abstract them.

ANTHONY'S DEPOSITION.

James Anthony in his said deposition testified, on direct examination, in substance as follows: My name is James Anthony; I live in Memphis, Tennessee; I am fifty-four years old and my occupation is that of a civil engineer. This has been my business since 1866; I studied my profession in Germany and in Sweden. I gradu-

ated in 1866 at Stuttgart. I have practiced this profession continuously since 1866.

I know the lands involved in this suit. I have some connection with the defendants in this case. With reference to these identical lands, I have no connection. I employed Mr. Odom to investigate the meander line and character of land it runs through. I did this for Bigelow Brothers. The plat used and referred to by Mr. Biggs and Mr. Odom in testifying is correct and was made in this office and filed for record. This is a copy of what is filed for record in Poinsett County. The subdivision is what is called "The unsurveyed land intersections," as shown on this plat. It was subdivided into sections by myself and under my direction in 1900, September and October, I think.

Timber grows all over the land; cypress and cottonwood on the outskirts of that land, both on the river and on the meander line. The center of the land in Section 10, 15, west half of 11, west half of 14, is the highest land in that country, comparing it with both sides of the river and it is known as "Gum Island," and the timber on these lands, this 10, 15, west half of 11 and west half of 14, are oak, some cottonwood, red gum, mulberry, some hickory, and is also covered with a dense undergrowth of spice wood. Between these lands which I have said are known as "Gum Island" and the land within the meander line, known as "Hatchie Coon," the country is low, swampy and in some places going as wide as a thousand and twelve hundred feet between high land and high land and narrowing down in places to seventy-five and one hundred feet wide.

I have followed the meandered line through 4 and 3 and 2 about which Mr. Biggs and Mr. Odom testified. I made those meander lines. As to the difference in the timber and land on one side of that line and the other, the timber on the "Hatchie Coon" property is oak and gum, and on the south, in between the two islands, cypress principally and some little cottonwood. I have known that country since 1874. It is known as the "Sunk Lands." It is possible at times to walk across that country. The best crossing is through 6, 12, 11

and 10 and through 9. There is an old wagon road that goes through there and there used to be a ferry. By 6 I mean Section 6 in 12-7.

Asked as to the nature of the country south of this crossing, with reference to the possibility of being crossed by team or horses or by foot, the witness said, "Well, what you call by foot, you mean across this country anywheres, as far as wagons are concerned, you would have to leave these middle sections out, and then you could cross through 35, 34 and 33 with wagon or otherwise."

It could not be crossed on foot in the south half of 24 and the south half of 22. By wading you can cross anywhere. There is water in Section 23. There may be a little flag in 14. The flag openings commence in the northeast corner of 2; they go down through Section 2 to the east half of Section 11. The east half of 14 and from the south line of Section 14 they turn due west, running out between Sections 14 and 23 and 15 and 22, and is here known as "Lead Fork Slough."

In Section 26 there is what is known as the "Scatters." That is more or less over the section; there is bunches of timber covering 25 or 30 acres, and these bunches of timber are surrounded by flag openings. There may also be a little of that in 25, but very little. 25 is pretty high ground, it is ash and oak. 25 is known as "Ash Camp."

Deposition of witness Anthony from this point, bottom page 130 of transcript to end of direct examination on page 131, was objected to by plaintiff in error and plaintiff in error moved to have same stricken out in so far as it attempted to show by oral evidence the condition of the *locus in quo* at the date of the Swamp Grant Act, September 28, 1850, especially in view of the fact that the witness has already testified that he didn't know anything about it earlier than 1874.

This objection and motion was by the court overruled and excepted to. Such testimony to which objection was made was substantially as follows:

The meander line through sections 6, 7, 18 and 19 until the meander line intersects the scatters follows the

old steamboat channel known as the Old River Channel. Long years ago the Old River Channel was open and navigable for boats, and during the fall of 1876 was used as a clearer and better channel than the main St. Francis.

The St. Francis River Channel from the upper end of Hatchie Coon Island or Deep Landing during the fall of that year, was so covered and filled up with sunken logs that it was impracticable to use the main channel of the St. Francis River during that distance.

In 1876 I was engaged there as surveyor, and was, at that time, County Surveyor of Mississippi County, and was engaged in selecting four hundred thousand acres of timber land for the Dundee Land and Timber Company in Edinburg, Scotland. Such steamboats as they had, ran up the "Old River" channel in 1876. They were flat bottom boats and propelled by steam. The "Old River" channel crosses the range line in the South-East quarter of Section 24, 12-6 and passes through 24 and 25 in a southerly direction and enters the scatters or right hand chute of Little River proper in Section 25, or rather it leaves 25 and enters 36 and 31. From where the meander line leaves the right hand chute of Old River, Section 36, a depression or slough follows the United States meander line through sections 36 and 35.

(Testimony on direct examination ends here.)

On cross-examination, the witness Anthony testified in substance as follows:

Cross-Examination by Mr. Ashley (James Anthony).

I was over this body of unsurveyed land in September and October, 1900; I had two corps of surveyors in there. Samuel Sage, at that time county surveyor of Craighead county, had charge of one party and Ernest Acres had charge of the other party. Acres is now in Mississippi county, Arkansas, and Sage is either at Lake City, or Jonesboro, I don't know which. The plat from which I have been testifying (Transcript, p. 138), the same one that has been testified to by the other two witnesses, is the result of that survey, and was made about that time, and is a copy of the one filed by me in Poin-

sett county. I was not at that time connected with the St. Francis Levee Board; was not known as the engineer of the St. Francis Levee Board. I have never had any connection with the St. Francis Levee Board in the capacity of a surveyor. Under the contract given me by the St. Francis Levee Board for the purchase of the unsurveyed lands, it was stipulated and agreed that I was to survey the unsurveyed lands at my own expense, in order to determine the amount of acres for which I had to pay. I had a contract with the St. Francis Levee Board for the purchase of the lands in controversy in this case. At the time of the transfer of these lands by the St. Francis Levee Board to Mr. Bodkin, Mr. Bodkin held a contract, which was afterwards assigned over to me. The option was made in Charley Bodkin's name and in my interest. The conveyance was to Bodkin; Bodkin actually held the land, but I was really the beneficial party. The legal title, so far as the St. Francis Levee Board could convey any, passed to Charley Bodkin, and the equitable title, so far as they could convey any, was in me. I have not actually been on any of these lands in controversy since that survey made in September, 1900. I could not say, without referring to my notes, how many acres of land there actually were in what a survey would make of the whole section, if extended up, that shows on my plat to be 4-12-6. I should think there would be six hundred and forty acres. The south end of Hatchie Coon island, which I call Gum island, is not called Hatchie Coon island by a great many people. I think they sometimes call them the Upper and Lower Hatchie Coon island; but the people living in there make a distinction between the Hatchie Coon island, and call one Hatchie Coon and the other Gum. Some call it Upper and Lower Hatchie Coon island on account of the cross cypress slough. I have been at that island in the early spring. I was over there on that island in February, 1898, and I was again over the island in the latter part of 1899. In low places where the flag is there is water. There are times when I have been in there when the water averages two and a half and three feet deep. The soil is usually covered by old cypress. When you get further south there is

flag in it; but right around where the meander line is it is a thick growth of old cypress,—four and five and six inches. I refer now to the slough that is south of the old southern meander line of Hatchie Coon island. I am somewhat interested in the result of the present lawsuit. I am not interested in the lands that are involved in this controversy at the present time. I had a contract with the St. Francis Levee Board for all the unsurveyed lands within the St. Francis district. I don't think there was any estimate ever made of the amount of these lands. I never at any time signed myself as "Chief Engineer" of the St. Francis Levee District. I remember the controversy that I had with a man named Schierholz, special agent of the United States Land Office. I was under a contract with the Levee Board to furnish information for the purpose of the recovery of timber on these unsurveyed lands. My contract was that if I held an option on these lands, I was practically the only man that knew where these lands were situated. In fact, I found them, and as long as it was to my interest,—as long as those lands were under contract to me,—to protect the timber on these lands. The St. Francis Levee Board, knowing this fact and knowing that I was thoroughly familiar with all the lands within the St. Francis Levee basin, entered into a contract with me, whereby I agreed to take care of and protect their interests in so far as depredations on their timber were concerned. And I was under contract to furnish necessary information to show anybody that cut timber on these lands to be depredators. I have that contract which I had with them, and am willing to let it go in as a part of my deposition. Such contract was as follows:

CONTRACT.

Whereas, the Board of Directors of the St. Francis Levee District owns considerable timber lands within its boundaries:

And Whereas, it is represented to its officers that certain persons have been trespassing and cutting timber upon said lands, and there are already suits instituted and in contemplation against such parties for the recovery of said timber, or the value thereof;

And Whereas, James Anthony is an experienced timber man and surveyor, and is acquainted with the said land;

Now, Therefore, the said Board of Directors of the St. Francis Levee District, for and in consideration of the services of the said James Anthony in securing evidence to enable said Board of Directors to recover said timber, or the value thereof, so cut by such parties so trespassing upon said lands, hereby agree to pay the said James Anthony twenty-five (25) per cent of all sums recovered and collected from parties so trespassing and cutting timber on said lands for the timber so cut by them.

And I, James Anthony, in consideration of such twenty-five (25) per cent, agree to keep watch over all of the said lands of the said Board of Directors, report the cutting of timber thereon by trespassers and collect and procure evidence thereof and furnish the same to the said Board to enable them to recover the said timber, or the value thereof.

Board of Directors, St. Francis Levee District.
By O. N. KILLOUGH, *President.*

Attest:
HUGH R. MCVEIGH, *Secretary.*
JAMES ANTHONY.

This is the original contract between myself and the St. Francis Levee Board. It is not true that in consideration of my services in procuring evidence to enable the said Board of Directors to recover said timber, or the value thereof, by such parties so trespassing upon said lands the Levee Board agreed to pay me twenty-five per cent of such sums collected. Nor is it true that it was necessary for me to furnish evidence that the Levee Board had some title to these unsurveyed lands. I did not undertake to furnish them evidence that parties were wrongfully cutting timber on these unsurveyed lands. The evidence I am giving in this case is not an attempt on my part to carry out that contract in favor of the grantees of the Levee Board. It was the part of the Levee Board to prosecute anybody for cutting timber on these lands, and it was not my contract to

show that the Levee Board had title. It was my contract, however, to furnish them the necessary evidence to prosecute people that depredated on their lands. This contract takes in the Levee Board unsurveyed lands as a whole—the tax-title lands and everything else. The suggestion that the Levee Board could claim title to these lands did not originate with me. I just simply for my own part was perfectly satisfied in regard to the title, and I told the Levee Board time and time and again that I was perfectly willing to take the title. I took an option on these unsurveyed lands at fifty cents an acre, and when the Levee Board transferred the lands to Bodkin, they were really carrying out their option to transfer their claim to them at fifty cents per acre. I paid the fifty cents per acre to the Levee Board in the fall of 1900. There was one other option out on these unsurveyed sunk lands, which are called the St. Francis Lake District, besides the one I held. They have conveyed to me six thousand acres in addition to the lands in controversy. I have not at the present time any contingent interest in the outcome of this litigation. My interest in the outcome of this litigation ceased in February, 1903,—February of the present year. I am at the present time the representative of the defendants in regard to these lands, and in regard to this suit. I said in my letter of May 20, 1902, to Charles M. Schierholz, from which you have been reading, as follows: "I also beg leave to inform you that two suits have been filed against us in regard to the title to these lands, and the courts of Arkansas have so far decided that the title is vested in the Board." That statement is correct so far as my conception of the case goes. When I also said in that letter, "I am under contract with the Levee Board to furnish the necessary information and prosecution for the recovery of such timber," I referred to the contract that has been introduced heretofore in evidence, and identified by me. When I signed this letter "James Anthony, C. E." I meant "Civil Engineer." "C. E." after a man's name, when he is a civil engineer, simply demonstrates the fact that he is a graduate, like "M. D." after a doctor's name. The Commercial Appeal made a mistake when it made the statement, "James

Anthony, who is in the employ of the St. Francis Levee Board, publishes the following in the Commercial Appeal." They naturally drew their own conclusions about that. I only handed them the letter just like Mr. Schierholz did his letter. This, however, is a correct copy of the letter as it was published in the Commercial Appeal. I have a copy of it here; I will give you the whole paper. When I said a little while ago that in February, 1903, my interest in this lawsuit ceased, except so far as I represented the defendants in the case in Arkansas, I simply meant that at that time the lands were sold to other people, and my interest in the lands ceased. It is true that long before that Mr. Bodkin had conveyed his claim or title to the land to H. C. Williamson. There were two deeds made,—one of them in November, and one in February, 1901. Bodkin transferred these lands to H. C. Williamson in 1901, and H. C. Williamson transferred these lands to Bigelow Brothers,—that is, this eleven thousand five hundred acres,—in 1901. Bigelow Brothers conveyed these lands to the Bauer Lumber Company of Indianapolis in February, 1903, and up to the time of the last transfer mentioned I was still interested in the claim of the Levee Board and its grantees to these lands. My interest in these particular lands was not evidenced by writing. My interest is the interest in the unsurveyed lands. You understand there are two tracts in here. This suit in question covers the Bigelow tract of eleven thousand five hundred acres; and outside of these lands I was interested in six thousand acres of similar lands. I am not still so interested. We have transferred the lands. In so far as the warranty deed goes, I have given these last gentlemen an assurance that I will furnish evidence to prove their titles to the lands similar to what I gave the Levee Board originally. I never signed any warranty deed to these unsurveyed lands, but I consider myself responsible for the covenants of warranty in the Bodkin deed; and in so far as the warranty deed goes, I have a vital interest in the determination of this controversy.

EVIDENCE IN REBUTTAL.

The plaintiff in error offered in rebuttal a quit

claim deed from the State of Arkansas to one W. D. Mallory to certain lands described as fractional S. ½ and fractional S. ½ of N. ½ of Sec. 28 and fractional N. ½ of Sec. 33, Township 12 North, Range 6 East, to show that the State of Arkansas has never claimed any title to the lands in controversy and has treated said lands as unconfirmed and unpatented from the United States to the State of Arkansas. The introduction of this deed was objected to by the defendants in error and the court sustained said objection and excluded said evidence, to which ruling of the court the plaintiff in error duly excepted at the time. See Bill of Exceptions on page 148 of transcript.

The deed last above referred to from the State of Arkansas to W. D. Mallory will be found on page 139 of transcript. This deed is in words and figures as follows:

THE STATE OF ARKANSAS.

To All to Whom These Presents Shall Come, Greeting:

Know ye that W. D. Mallory has this day purchased from the State of Arkansas the Fractional South Half and the Fractional South ½ of the North ½ of Section Twenty-eight (28) and the Fractional North Half of Section Thirty-three in Township Twelve North of the Base Line in Range Six (6) East of the Fifth Principal Meridian containing Five Hundred and Sixty-three and 36-100 (563.36-100) Acres the same being a portion of the Swamp and Overflowed lands selected by the State of Arkansas as inuring to the said State under the provisions of an Act of Congress of the United States of America entitled, "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits." Approved 28th September, 1850, and which still remains unapproved and unpatented to the State of Arkansas by the General Government.

Now therefore I, C. B. Myers, Commissioner of State Lands in and for the State of Arkansas in pur-

suance of the provisions of an Act of the General Assembly, entitled "An Act to authorize the sale of swamp lands in certain cases" approved 18th March, 1879, and for the consideration of Seven Hundred and Four Dollars and twenty cents this day paid to the Treasurer of the State of Arkansas, being the amount in full for the purchase money for said land, the receipt for the same being now on file in my office, do hereby for and in behalf of the State of Arkansas grant, bargain, sell and convey to the said W. D. Mallory and to his heirs and assigns forever all the right, title, interest and claim the State of Arkansas has in and to the above described land together with all the appurtenances hereditaments thereunto belonging.

To have and to hold the same as now held by the said State unto the said W. D. Mallory and unto his heirs and assigns forever.

Provided, however, that if the land above described and conveyed is of the character not comprehended in the act of Congress granting the swamp and overflowed lands to the State of Arkansas, then and in that case the said W. D. Mallory shall have no claim or demand on the State of Arkansas for recoupment or otherwise.

In testimony whereof, I, C. B. Myers, Commissioner of State Lands for the State of Arkansas, have hereunto set my hand and caused the seal of this office to be affixed at the City of Little Rock, on this 28th day of October, 1892.

C. B. MYERS,

(SEAL) *Commissioner of State Lands.*

The Bill of Exceptions shows that all of the documents therein referred to were duly filed at the hearing and made a part of the record in this cause, and thereupon the Chancery Court of Poinsett County, Arkansas, rendered the following decree:

DECREE OF CHANCERY COURT.

Chapman & Dewey Land Company, Plaintiff,

vs.

Chas. H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, Defendants.

Comes the plaintiff, Chapman & Dewey Land Company, a corporation under the laws of the State of Missouri, by Henry D. Ashley, R. S. Rodgers and Frierson & Frierson, its solicitors, and the defendants, Chas. H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn, by N. W. Norton, their solicitor, and this cause is submitted upon the complaint and answer, cross-complaint and reply thereto, and upon the exhibits to said pleadings, photo-lithographic plats, according to United States surveys, field notes, selections and approvals, patents, conveyances and documentary evidence; and upon the depositions of Geo. C. Peters, F. H. Varner, T. L. Davis, Jno. M. Biggs, Chas. S. Odom and James Anthony, and exhibits thereto; and upon consideration thereof and being duly advised, the court finds that the plaintiff is without title to the lands to which it seeks to have its title quieted in this action and is without equity to have the title of defendants thereto held void and invalid, the said lands being situated in the County of Poinsett in the State of Arkansas and described as follows:

All Section 1, all Section 10, all Section 11, all Section 12, all Section 13, all Section 14, all Section 23, all Section 24, all Section 26, all Section 34, all fractional Section 9, all fractional Section 15, all fractional Section 22, all fractional Section 25, all fractional Section 27, all fractional Section 28 lying east of the main channel of the St. Francis river, all fractional Section 33 lying east of the main channel of St. Francis river, as shown on said Anthony survey; all fractional Section 35 lying north and west of the meandered line as per original United States survey as shown by plats of date August 8, 1849; all fractional Section 36 lying north and west of the meandered line of the Lake or Sunk Lands

as per original United States survey, as shown by plats of date August 8, 1849; all fractional Section 2 lying south and east of meandered line as per original United States survey, as shown by plats of date August 8, 1849, all in Township 12 north of base line in Range 6 east of the Fifth Principal Meridian, all east of St. Francis river.

And all fractional Section 3, Township 12 north, Range 6 east, lying south of meandered line as per original United States survey as shown by plats of date August 8, 1849, 167.47 acres. All fractional Section 4, Township 12 north, Range 6 east, lying west and south of meandered line as per original United States survey as shown by plats of date August 8, 1849, 249.99 acres. All fractional Section 18, Township 12 north, Range 7 east, lying west of meandered line as per original United States survey as shown by plats of date October 27, 1845, 503.03 acres. All fractional Section 19, Township 12 north, Range 7 east, lying west of meandered line as per original United States survey as shown by plats of date October 27, 1845, 230.12 acres; and containing in all eleven thousand five hundred and forty-two and 96-100 acres (11,542.96), more or less. All according to the Anthony survey of September and October, 1900, recorded in Plat Book "B," pages 1, 2 and 3, with field notes for same in Plat Book "B," pages 5 and 6.

It is therefore by the court considered, ordered and decreed that the plaintiff take nothing by this action and that the plaintiff's complaint be and the same is hereby dismissed for want of equity; and that the defendants do have and recover of and from the plaintiff all costs incurred in this action for which execution may issue as at law, to all of which rulings and decisions of the court plaintiff excepts.

As this decree against the plaintiff in the original complaint determines the rights of the parties to the property, the injunction prayed in the cross-bill of defendants is unnecessary and on that account not ordered. And leave is given the parties hereto to withdraw all original deeds introduced in evidence in this case.

And the plaintiff prays an appeal to the Supreme

Court of the State of Arkansas, which is by the court granted, and plaintiff prays leave to file a bill of exceptions, which is allowed and ninety days granted in which to file bill of exceptions. (Transcript, p. 140.)

Thereafter the suit coming on regularly for hearing in the Supreme Court of Arkansas was submitted and the foregoing decree affirmed. (See transcript, p. 151.)

And the opinion of the court by Battle, J., (McCulloch, J., dissenting and Hill, C. J., absent) was as follows:

OPINION OF SUPREME COURT OF ARKANSAS.

92 S. W. Rep., 534.

BATTLE, J. Chapman & Dewey Land Company, a corporation organized under the laws of the state of Missouri, brought a suit against Charles H. Bigelow, N. P. Bigelow, L. T. Walker and F. H. Hartshorn to quiet title to certain lands, and for that purpose to have declared void and of no effect certain conveyances, under which the defendants claim title thereto.

Plaintiff claims title under an act of Congress entitled "An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits," approved September 28, 1850. It alleges that, in pursuance of the provisions of this act, surveyed sections and parts of fractional sections in fractional township 12 north of the base line, in range 6 east of the fifth principal meridian, and in township 12 north of the base line, in range 7 east of the fifth principal meridian, and in Poinsett county, in this state, were duly selected, approved, and patented to the state of Arkansas, as a part of the swamp land-grant; that certain of these lands were conveyed by the state of Arkansas, on the 12th day of June, 1871, to Moses S. Beach, that plaintiff acquired and is the owner of these lands so conveyed to Beach as well as certain other of the lands which were deeded to the state of Arkansas by the United States; that many of the legal subdivisions of sections so acquired by plaintiff were bounded by a large body of non-navigable water called

in the official surveys of the United States and field notes thereof as the "Sunk Lands," "St. Francis River Sunk Lands," the "Hatchie Coon Sunk Lands," and the "Cut-Off Lake"; that the legal subdivisions so bounding were fractional, and in the survey were meandered along such body of water. The plaintiff, thereupon claims the lands lying under this body of water; and these are the lands in controversy in this suit to which it (plaintiff) seeks a decree to quiet its title as against the defendants.

Plaintiff alleges that these lands are wild, unimproved, and unoccupied; and that the defendants are claiming them under certain deeds; and asks that these be declared void, invalid, and of no force whatever.

The defendants answered and denied that the so-called "Sunk Land" was a body of water or that it is shown to be by the surveys of the United States or the field notes; but that it was sometimes temporarily flooded with water, and was land bearing "trees and vegetables, willow and cypress"; and that the meandered lines run as alleged by plaintiff were run as boundaries, and not for the purpose of finding the number of acres in the sections or legal subdivisions "for which purchasers would have to pay when the government might dispose of the land."

The chancery court, after hearing the evidence adduced by all the parties, dismissed the complaint for want of equity, and rendered judgment in favor of the defendants for costs; and the plaintiff appealed.

We have attempted to state briefly so much of the pleadings in the case as presents the issue for our consideration. Before noticing the facts we will consider the law of the case.

In *Hardin* v. *Jordan*, 140 U. S., 371, 11 Sup. Ct., 808, 838, 35 L. Ed. 428, the court, after an extensive review of authorities, held that, "by the common law, under a grant of lands bounded on a lake or pond which is not tidewater and is not navigable, the grantee takes to the center of the lake or pond, ratably with other riparian proprietors if there be such."

Horne v. *Smith*, 159 U. S., 40, 15 Sup. Ct. 988, 40 L. Ed., 68, was an action to recover the possession of certain lots. 'Plaintiff's title vested on a patent from the

United States, dated March 20, 1885, conveying 'lot numbered 7 of section 23, and the lots numbered 1 and 2 of section 26, in township 29 S., of range 38 E., of Tallahassee meridian in Florida, containing 170.42 acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General.' The official plat of township 29 was in evidence, which showed that sections 23 and 26 were fractional sections bordering on the Indian river. On this plat a meander line runs through the sections from north to south, the Indian river being on the west thereof. The east line of the section is, so far as these lots are concerned, the ordinary straight line of government surveys. In the S. ½ of the S. E. ¼ of section 23 is lot 7. The area of that lot is given as 73.06 acres. The N. E. ¼ of section 26 is divided into lots 1 and 2. The area of lot 1 is 54.90 acres, and of lot 2, 42.53 acres. The boundary lines of these three lots are all straight, with the exception of the meander line on the west. The length of the section line between lot 7 and lot 1, extending from the east section line to the meander line on the west, is stated to be 30.55 chains. Along the course of this meander line, as shown on the plat, runs, according to the testimony, a bayou or savannah opening into Indian river, and west of this bayou, and between it and the main waters of the river, is a body of land extending in width a distance of a mile or a mile and a quarter, and amounting to some 600 acres. This is a body of low land, in some places, however, from 4 to 6 feet above the level of the river, and covered with a growth of live oak trees, many of them 3 and 4 feet in diameter. It was not land formed by accretion since the survey."

Mr. Justice Brewer, in delivering the opinion of the court, said: "But the question in the case is whether the boundary of these lots is the bayou or the main body of the river. That a water line runs along the course of the meander line cannot, of course, in the face of the plat and survey, be questioned, but that the meander line of the plat is the water line of the bayou rather than that of the main body of the river, is evident from these facts. In the first place, the area of the lot is given, and when that area is stated to be 170 acres, it is obvious

that no survey was intended of over 700 acres. In the second place, the meander line, as shown on the plat, is, so far as these lots are concerned, wholly within the E. ½ of sections 23 and 26, while the water line of the main body of the river is a mile or a mile and a quarter west thereof, in sections 22 and 27. Again, the distance from the east line of the section to the meander line is given, which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half. Further, the description in the patent is of certain lots in sections 23 and 26, and, manifestly, that was not intended to include land in sections 22 and 27. These considerations are conclusive that the water line which was surveyed, and made the boundary of the lots, was the water line of the bayou or savannah, and there has been simply an omission to make any survey of the tract west of the bayou, and between it and the main body of the Indian river."

Again he says: "But it is said that because the water mentioned on the plat is called Indian river the boundary must be taken as the water line of the river, and cannot be that of any intermediate bayou. * * * In the case before us, obviously, the surveyors surveyed only to this bayou, and called that the river."

French-Glenn Live Stock Company v. *Springer,* 185 U. S. 47, 22 Sup. Ct. 563, 46 L. Ed. 800, was an action to recover possession of a certain tract of land. "To support its contention the plaintiff in error put in evidence at the trial, an official plat of the government survey of township 26 S., range 31 E. of the Willamette meridian, showing the township rendered fractional by abutting upon the meander line along the south side of Malheur lake, which plat appears to have been approved by the land department and filed in the local land office on September 17, 1877. The plat shows lots 3 and 4, section 34, and lots 1 and 2, section 35, as bounded on the north by the meander line of Malheur lake." The plaintiff in error purchased these lots of the state of Oregon. He contended that he bought in reliance upon plats and patents which showed the meander line of the lake, and that "such plats and patents must be deemed to conclusively

establish that the lake was the northern boundary of the land, so far as the rights of riparian grantees are concerned." The court held "that, while there was a lake abutting on or to the north of the lots, the plaintiff would take all land between the meander line and the water, and all accretions, it was competent for the defendant to show that there was not, at the time of the survey, nor since, any such lake, and to contend that, in such a state of facts there could be no intervening land, and no accretion by reliction."

In *Niles* v. *Cedar Point Club*, 175 U. S. 300, 20 Sup. Ct., 124, 44 L. Ed. 171, the facts are, in part, as follows:

"In the years 1834 and 1835, Ambrose Rice, a deputy surveyor, surveyed and subdivided into sections and quarter sections fractional township 9 S., in range 9 E., and townships 9 and 10 S., in range 10 E., the same being situated in the northern part of Ohio and adjacent to Lake Erie. From his field notes, duly certified to the surveyor general of that land district, the latter prepared a correct plat of the townships, showing the subdivisions thereof, and marking all the actual survey lines and the corners designated by said survey. By the field notes and plat, certain sections appear to be fractional, the line on the north being meandered in a general direction from the northwest to the southeast. The tract to the north of this line was described as 'flag marsh' and 'impassable marsh and water.' * * * "

"In 1881 John B. Marston, under instruction from the General Land Office, surveyed and subdivided into sections and quarter sections the area marked upon the surveyor general's plat, above referred to, as 'flag marsh' and 'impassable marsh and water.' * * * Disclosing the conditions of these lands, paragraphs 16 and 17 of the statement of facts are as follows:

" 'At the time of the making of the survey by Ambrose Rice the waters of Lake Erie were above their ordinary stage, and there was more than the usual volume of water standing upon the land in controversy herein and flowing to and upon the same from the large bodies of land now in Ottowa, Wood and Lucas counties, respect-

ively, having their drainage to and through the said premises in controversy herein.

" '(17) The general character, description and condition of the said lands surveyed by said Marston, was by him correctly set forth under the title 'General Description' in the field notes of the said survey so as aforesaid by him certified to the Commissioner of the General Land Office.

" 'That concerning the portion of said survey in township 9 S., range 9 E., reciting, to-wit:

" 'The surface of that part of this fractional township comprised in this survey, is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Many parts of it, particularly in the south and west parts, are mown for a kind of coarse hay. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the natural drainage from the woods on the south and west, which, without any well defined channel, finds its way across the marsh to the lake. Again, in heavy gales of wind it is subject to inundations from the lake, which, upon subsidence of the gale or change of direction in the wind, slowly finds its way out again into the lake. It is bounded along the lake by a sand beach averaging 1 chain in width and 3 feet in height.

" 'That concerning the portion of said survey in township 9 S., range 10 E., reciting, to-wit:

" 'The surface of this fractional township is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Much of the south part can be mown for marsh hay, being in a measure drained by a canal that has been constructed in the township south. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the drainage from the woods on the south and west, which spread over the entire surface and without any positive channel finds its way to the lake. Again the township is subject to inundations from the lake during heavy gales of wind, which, upon the termination of the gale or a change in the direction of the wind, slowly finds its way back into the lake.' "

We should have stated before this that "in July, 1844 (before the Marston survey was made), patents for

several of the fractional sections facing on the marsh were issued to Margaret Bailey, under whom the appellant claims; that the patents each recite the number of acres granted, and each states that the tract is a fractional section, 'according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Margaret Bailey.'" After the Marston survey the lands surveyed by him were patented by the United States, and the title so conveyed passed by subsequent deeds to the appellee. The controversy in the case was between the appellant, claiming it by virtue of its contiguity to other lands conveyed to his grantors by the United States before the Marston survey, and the appellee, who claims under a patent of the United States. The appellee's title was sustained.

Mr. Justice Brewer, delivering the opinion of the court, said: "Generally, these meander lines are lines which course the banks of navigable streams or other navigable waters. Here, it appears distinctly from the field notes and the plat that the surveyor, Rice, stopped his survey at this 'marsh' as he called it. These surveys were approved and a plat prepared, which was based upon the survey and field notes, and showed the limits of the tracts which were for sale. The patents, referring in terms to the survey and plat, clearly disclose that the government was not intending to and did not convey any land which was a part of the marsh. 'The patent itself does not contain all the particulars of the survey, but the grant of the lands is recited to be according to the official plat of the survey of said lands, returned to the General Land Office by the surveyor general, thereby adopting the plat as a part of the instrument.' * * * In *James* v. *Howell*, 41 Ohio St., 696, 707, the supreme court of Ohio, speaking of these very patents and this marsh, said: 'The meander line along the southerly border of the marsh was, in fact, intended to be the boundary line of the fractional sections.'"

Again he said: "It is impossible to hold that the lower courts erred in the conclusion that this marsh was not to be regarded as land continuously submerged, either

under Lake Erie, a navigable lake, and in that case belonging to the state of Ohio, * * * under a pond or other similar body of non-navigable inland waters, and therefore generally the property of riparian owners. It was called a marsh by Rice, the first surveyor, is so styled on the plat, and the conditions as disclosed by the agreed statement indicate that it was a body of low swampy land, partly boggy and partly dry, sometimes subject to inundations from Lake Erie or the overflow of the adjacent streams, but not permanently covered with water.

* * * * * * * *

"But it is urged that the fact that a meandered line was run amounts to a determination by the land department that the surveyed fractional sections bordered upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field notes and plat, that that which was lying beyond the surveyed sections was 'flag marsh,' or 'impassable marsh and water.' But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land, or water, government or Indian reservation."

In suits to quiet title the plaintiff is not entitled to recover unless he be in possession, or his title be equitable, or, having the legal title, the land be wild and unoccupied. *Mathews* v. *Marks,* 44 Ark., 436; *St. Louis Refrigerator & Wooden Gutter Co.* v. *Thornton* (Ark.) 86 S. W., 852. The lands in controversy are wild and unoccupied. The possession of them follows the title. Hence, appellant "must succeed, if at all," as in actions of ejectment, "upon the strength of his own title, and cannot rely upon the weakness of his adversary's"; and the burden is on it to show title. *Lawrence* v. *Zimpleman,* 37 Ark., 644, 647; *Kelley* v. *Laconia Levee District* (Ark.) 85 S. W., 249, 250; *St. Louis Refrigerator & Wooden Gutter Co.* v. *Thornton* (Ark.) 86 S. W., 852, 853.

Appellant claims the land in controversy by virtue of the contiguity of certain lands, acquired by it from the

United States, through the state of Arkansas and other grantors, to what is called "Sunk Lands" and "Cut-Off Lake." This "Sunk Land" from appellant's land on one side to the St. Francis river, a navigable stream, on the other, is there four and six miles wide. In this area there are over 10,000 acres. The field notes and plat introduced as evidence show the condition of only those sections, and that was on the 30th of May, 1849. John W. Garretson, who surveyed the subdivisional lines and meanders of township 12 N., range 6 E., made this note in his record of surveys:

"May 30, 1849. The water is at a medium stage at this time, and it is utterly impossible to get to the part of the south boundary of section 36, T. 13 N., R. 6 E., which was run by Mr. James M. Danley. The Hatchie Coon Sunk Lands, on the west side of which I closed the meanders in Sec. 2, T. 12 N., R. 6 E., is so deep at this time that it cannot be waded. The east boundaries of Secs. 24 and 25, T. 12 N., R. 6 E., I passed in December, 1848, in a canoe, there was water there on them then from eight to ten feet deep, and no timber except groups of willow and small cypress trees, such as grow in the main sunk lands of the St. Francis river. Mr. Samuel Johnson, it seems, established corners in this lake, as it is called, on the north side of the right-hand chute of Little river, which right-hand chute is very similar to the ground through which the lines, viz., east boundary of Secs. 24 and 25, T. 12 N., R. 6 E., runs. I have stated this much in order to show the utter impossibility of running lines or meanders from any corners on the above named boundaries, only at the dryest season of the year. The part of the ground through which east boundary of Secs. 24 and 25 lies is called Cut-Off Lake, and the south boundary of Section 36, T. 13 N., R. 6 E., could not be reached by Mr. Samuel Johnson, who run the east boundary of T. 12 N., R. 6 E., at the time he run said boundary.

"JOHN W. GARRETSON, *Deputy Surveyor.*"

He indirectly says the lands mentioned could be surveyed at the dryest season of the year, and says that two of the sections had on them "groups of willow and small cypress trees."

The maps introduced as evidence in the hearing of this cause show that fractional sections 6, 7, 18, 19, 30, 35 and 36 form the western boundary of what is called "Sunk Lands," in controversy. James Anthony, an experienced and skilled civil engineer, testified that in 1876 he found that the government meander line of these sections followed the old steamboat channel, known as the "Old River," which at one time was navigable. The fact that the meander lines followed the channel of Old River is *prima facie* evidence that it was the water line of these sections when the meander lines were run, and was the stream meandered.

The official maps show that Cut-Off Lake was the water boundary of fractional sections 35 and 36.

What lay beyond these water lines or boundaries in what is called "Sunk Land?" These sections were surveyed by the government about 1848 or 1849. They were conveyed by the United States to the state of Arkansas by two patents dated, respectively, July 29, 1852, and September 27, 1858; and the state conveyed all of them, except sections 6 and 7, on the 12th of June, 1871, to Moses S. Beach, from whom appellant deraigns title. On these various dates there is no direct evidence to show the condition of the lands in controversy. Claiming them by virtue of its riparian rights the burden is upon appellants, if it succeeds at all, to show their conditions. It has failed to do so.

James Anthony, who has known the land since 1874, three years after the state of Arkansas conveyed lands to Moses S. Beach, as before stated, testified as follows:

"Timber grows all over the land; cypress and cottonwood on the outskirts of that land, both on the river and on the meander line. The center of the land in section 10, 15, west half of 11, west half of 14, is the highest land in that country, comparing it with both sides of the river, and it is known as 'Gum Island,' and the timber on these lands, this 10, 15, west half of 11, and west half of 14, are oak, some cottonwood, red gum, mulberry, some hickory, and is also covered with a dense undergrowth of spice wood. Between these lands, which I have said are known as 'Gum Island,' and the land within the meander

line, known as 'Hatchie Coon,' the country is low, swampy, and in some places going as wide as 1,000 and 1,200 feet between high land and high land, and narrowing down in places to 75 and 100 feet wide.

"I have followed the meander line through 4 and 3 and 2, about which Mr. Biggs and Mr. Odom testified. I made those meander lines. As to the difference in the timber and land on one side of that line and the other, the timber on the 'Hatchie Coon' property is oak and gum, and on the south, in between the two islands, cypress principally and some little cottonwood. I have known that country since 1874. It is known as the 'Sunk Lands.' It is possible at times to walk across that country. The best crossing is through 6, 12, 11 and 10, and through 9. There is an old wagon road that goes through there, and there used to be a ferry. By 6 I mean sections 6 in 12—7.

"Asked as to the nature of the country south of this crossing, with reference to the possibility of being crossed by team or horses or by foot, the witness said: 'Well, what you call by foot, you mean across this country anywheres, as far as wagons are concerned you would have to leave these middle sections out, and then you could cross through 35, 34 and 33 with wagon or otherwise.'

"It could not be crossed on foot in the S. ½ of 24 and the S. ½ of 22. By wading you can cross anywhere. There is water in section 23. There may be a little flag in 14. The flag openings commence in the northeast corner of 2. They go down through section 2 to the E. ½ of section 11. The E. ½ of 14 and from the south line of section 14 they turn due west, running out between sections 14 and 23 and 15 and 22, and is here known as 'Lead Fork Slough.' In section 26 there is what is known as the 'Scatters.' That is, more or less over the section, there is bunches of timber covering 25 or 30 acres, and these bunches of timber are surrounded by flag openings. There may also be a little of that in 25, but very little. 25 is pretty high ground, it is ash and oak. 25 is known as 'Ash Camp.'"

This testimony is strongly corroborated by the testimony of other witnesses.

Were the lands in controversy higher in 1874, and since then than they were in 1848, when the United States survey was made, or in 1852 or 1858 when the United States conveyed to this state?

T. L. Davis testified that "there is sediment always forming, and after every overflow there is sediment found, and the land is gradually rising up." F. H. Varner testified that he had resided not far from this land ever since 1844 (four years before any survey was made) that low places filled with water are gradually filling up, but further than this the land has not been elevated. John M. Biggs testified that he does not think that the land has filled up or been elevated any at all. That the overflows wash out these low places and prevent them filling; that nearly everywhere on what is known as "Sunk Lands" on top of the ground, there is an ore-like substance in pieces as heavy as a pound to five pounds. This clearly indicates that the lands have not been materially elevated by sediment deposited on top of the ground. If it was the ore would be covered. The preponderance of the evidence, we think, shows that the elevation of the "Sunk Lands" has not changed.

According to the opinion of the court in *Horne* v. *Smith*, 159 U. S. 40, 15 Sup. Ct. 988, 40 L. Ed., 68, and *Niles* v. *Cedar Point Club*, 175 U. S. 300, 20 Sup. Ct. 124, 44 L. Ed., 171, we do not think that the appellant acquired the lands in controversy by virtue of his riparian rights, or is the owner thereof, and so decide. Like the land in controversy in *Niles* v. *Cedar Point Club, supra*, they are low swampy lands, checked by bayous, subject to inundation, and reclaimable, to some extent, for agricultural purposes; and not such lands as can be acquired by virtue of riparian rights for fishing and other water purposes.

Appellant offered a letter of the Secretary of the Interior of the United States to the Commissioner of the General Land Office as evidence, and the court refused to receive or allow it to be read. The letter was a mere expression of opinion as to the lands in controversy. There was no contest before his department as to such lands which called for decision. There were no parties before him seeking for an adjudication. There were no issues

to be decided. No one interested had an opportunity to be heard. The letter was of no binding force or effect upon any one, and was properly excluded.

Decree affirmed.

McCULLOCH, J., dissents. HILL, C. J., absent.

Transcript, pp. 151- 159.

FEDERAL QUESTIONS INVOLVED.

The opinion of the supreme court of Arkansas above set forth held in substance and effect as follows:

1. That the *locus in quo* was land at the date of the surveys made under the direction and authority of the General Land Office of the United States, and at the date of the grant from the United States to the state of Arkansas of the adjacent surveyed lands, and was not a single permanent body of water as indicated by said surveys, and the field notes and plats thereof duly returned to the General Land Office by the Surveyor of Public Lands of the United States in and for the state of Arkansas, except that around a portion of said *locus in quo* the meander lines shown on the plats of said United States surveys, were in fact run along a channel not shown or designated in any of the field notes or plats of said official survey, and along a body of water shown and designated in said plats and field notes as "Cut-Off Lake," and that beyond said channel and beyond said "Cut-Off Lake," the *locus in quo* at the date of said surveys was land, said plats and field notes to the contrary notwithstanding.

2. That the physical condition of the *locus in quo* has not changed since the making of the surveys aforesaid, and that the portions of said *locus in quo* lying beyond said alleged channel, and beyond "Cut-Off Lake," was, in fact, land at the date of said surveys and at all times since, said plats and field notes to the contrary notwithstanding.

3. That a certain note dated May 30, 1849, among the field notes of said United States surveys, indirectly showed that the *locus in quo* might have been surveyed in the driest season of the year.

4. That the ruling of the Secretary of the Interior contained in the letter hereinbefore set out, finding the *locus in quo* to have been at the date of said surveys, a permanent body of water, was of no binding force or effect upon anyone and was properly excluded in this cause.

5. That the court could legally make inferences from the oral evidence introduced herein as to conditions of the *locus in quo* twenty-five to fifty years after the official surveys that such *locus in quo* was not a permanent body of water, when surveyed, but was then land, the plats and field notes and the finding of the Secretary of the Interior based thereon to the contrary notwithstanding.

Hence this suit has necessarily involved and there have been raised and presented by plaintiff in error from the beginning of the original trial in the chancery court of Poinsett County, Arkansas, the following Federal questions decided adversely to plaintiff in error and all set out in petition in error.

"First. Whether said surveys and the field notes and plats thereof made under authority of the United States, are not upon the entire record in this case conclusive evidence of the existence at the time the same were made and on the 28th day of September, 1850, of a permanent body of water covering the *locus in quo*.

Second. Whether said surveys and the field notes and plats thereof, made under authority of the United States, were erroneous and failed to properly show and truly represent physical conditions existing in and about the region surveyed at the date of said surveys.

Third. Whether the field note dated May 30th, 1849, hereinbefore mentioned, could properly be construed as showing or tending to show, that the entire *locus in quo* was, at the date of said survey, land, and not a permanent body of water.

Fourth. Whether the finding of the Secretary of the Interior contained in his said letter of November 17th, 1902, based on said plats and field notes, to the effect that the *locus in quo* was a permanent body of water at the date of said surveys, was properly excluded in this cause.

Fifth. Whether said finding of the Secretary of the Interior was of no binding force or effect in this cause for any purpose.

Sixth. Whether under and by virtue of the official record of said surveys made under authority of the United States and under and by virtue of the laws of the United States, and especially the said act of Congress of September 28th, 1850, and patents issued by the United States, and the rules and regulations of the General Land Office of the United States, and the rulings of the Commissioner of said General Land Office, and of the Secretary of the Interior, and the adjudications of the supreme court of the United States, the *locus in quo* does not belong to your petitioner as riparian owner, there being no law of the state of Arkansas affecting riparian rights to the contrary.

Seventh. Whether under and by virtue of the official record of said United States surveys, and under and by virtue of the laws of the United States, and especially the said act of Congress of September 28th, 1850, and patents issued by the United States, and said rules and regulations of said General Land Office, and said rulings of the said Commissioner of the General Land Office, and of the Secretary of the Interior, and the adjudications of the supreme court of the United States, your petitioner

is not entitled in equity to have its title to the *locus in quo* quieted as against the claims of the defendants in error, the said deeds under which the defendants in error claim declared invalid, void and of no force and effect, and the prayer of the plaintiff's petition in said cause granted.

Eighth. Whether the said letter of the Secretary of the Interior of November 17th, 1902, is not conclusive on any or all the following points:

1. That the said surveys made under the authority of his department and the official plats and field notes of said surveys show that at the date of said surveys the *locus in quo* was a permanent body of water.

2. That the *locus in quo* has never been surveyed under authority of the United States and has never been selected by the state of Arkansas as land inuring to it under the act of Congress of September 28th, 1850, has never been confirmed or approved to said state as swamp or overflowed land by the Secretary of the Interior, and has never been patented to said state by the United States as swamp or overflowed lands.

3. That the *locus in quo* was on September 28, 1850, a permanent body of water.

4. That the state of Arkansas never acquired the *locus in quo* as swamp or overflowed land inuring to it under said act of Congress of September 28, 1859, but did acquire it by virtue of the riparian rights which passed to said state by patents from the United States, conveying under said act of September 28, 1850, the surrounding surveyed lands.

5. That the *locus in quo* does not belong to the United States.

6. That the *locus in quo* belongs to the riparian owners, there being no law of the state of Arkansas concerning and affecting riparian ownership, to the contrary.

SPECIFICATIONS OF ERROR.

Substance of oral testimony admitted over the objection of plaintiff in error.

WITNESS JOHN M. BIGGS. (Tr., 117.)

Live at Marked Tree, Arkansas, age 36, occupation hunter and trapper.

Have been familiar with "Sunk Lands" in Township 12, Range 6 East, Poinsett County, Arkansas, since 1888; *have hunted and trapped over it;* also helped Odom survey east of the river few days before.

Here follows testimony as to present condition of *locus in quo*:

"Q. Mr. Biggs, are there any places in that territory we have been talking about where there is an ore-like substance on the soil? A. Yes, sir, all over pretty near everywhere on the land, in the sloughs and even on the high land you can find it.

Q. What appearance has it? A. It looks a good deal like stone coal.

Q. When you meet with that what size places is it on? A. It is all over the land in pieces as big as a pound to five pounds."

Above testimony about the ore-like substance is quoted because Judge Battle in his opinion draws inferences from these few lines which plaintiff in error confesses his inability to follow.

Cross-Examination.

This unsurveyed region between Hatchie Coon Island on the north, the Government meander line between 6, 7 and 18 on the east and the Government meander line in 35 and 6 of the south is what is known as "St. Francis Lake." *Have known that territory since* 1885, *constantly since* 1888.

The balance of Biggs' testimony is simply on present conditions.

WITNESS CHARLES E. ODOM. (Tr., 126.)

Residence, Memphis, Tennessee. Have been a surveyor for two years. Am the Odom that went with Biggs over meander lines as an employee of James Anthony & Co., representing the defendant. *Went to locus in quo for above purpose on August* 18, 1903.

Am not familiar with land in question.

WITNESS JAMES ANTHONY. (Tr., 128.)

Am a surveyor connected with defendants in this case. Employed Odom to investigate the meander line and character of lands it runs through for Bigelow Brothers.

Identifies Anthony Plat "filed for record in Poinsett County, Arkansas, as what is called "The unsurveyed land intersections."

Have known this country since 1874.

A. "The meander line through Sections 6, 7, 18 and 19 on down until the meander line intersects the "Scatters" follows the old steamboat channel known as the "Old River" channel. Long years ago the Old River channel was opened and navigable for boats, and during the fall of 1876 was used as a clearer and better channel than the main St. Francis.

The St. Francis channel from the upper end of Hatchie Coon Island or Deep Landing, during the fall of that year, was so covered and filled up with sunken logs that it was impracticable to use the main channel of the St. Francis river during that distance.

For a complete abstract of Anthony's entire testimony, see ante, p. 26.

The only oral testimony offered by defendant in error was testimony of these three witnesses, Biggs, who had not known the region at all earlier than 1885; Odom, who stated he was not familiar with the region and appears never to have been below the north township line of Township 12, Range 6, until that August 18, 1903,

when he went with Biggs; and Anthony, who didn't pretend to have known the region prior to 1874. None of them even pretend to testify as to conditions earlier than 1874.

FIRST SPECIFICATION OF ERROR.

The error of both the Chancery Court of Poinsett County, Arkansas, and of the Supreme Court of Arkansas in admitting receiving and basing a decree on this incompetent oral evidence, thus impeaching and contradicting the official field notes, plats, surveys and patents all made under the direction and authority of the Land Department of the United States. None of said witnesses knew anything or attempted to state anything as to the condition of *locus in quo* at the time of such official surveys (1840 to 1849) earlier than 1874, and all such testimony was received over the specific objections of plaintiff in error.

See ante, p. 25, and more in detail pp. 147 and 148 of transcript.

SECOND SPECIFICATION OF ERROR.

The admission and reception of same oral evidence of same three witnesses to impeach and contradict the official finding of the Land Department and Secretary of the Interior made as to the identical *locus in quo* in proceedings originally initiated by the St. Francis Levee Board, grantors of defendants in error, based on said official field notes, surveys, plats and patents that the *locus in quo* was a permanent body of water. See *ante*, p. 19, where the Secretary says "Therefore, the conditions existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depredations on these lands. The returns of the township surveys show upon their face that what are now alleged to be unsurveyed

portions of said townships were then actually bodies of water and were properly meandered as such.

There is nothing in the report of the Special Agent, or in any of the papers submitted therewith to impeach those returns as to the physical conditions of land and water at that time."

THIRD SPECIFICATION OF ERROR.

The supreme court of Arkansas erred in its holding that the surveys and field notes and plats thereof introduced in evidence by plaintiff in error (see transcript, p. 142) and made under the direction and authority of the General Land Office of the United States did not show the true physical condition of the *locus in quo* at the date of said surveys, and in holding that said *locus in quo* was not a permanent body of water at the date of said surveys, but was land at the date of said surveys.

FOURTH SPECIFICATION OF ERROR.

The Supreme Court of Arkansas erred in holding in effect that the title of the *locus in quo* is in the United States, and therefore not in the plaintff in error as riparian owner, especially as the Land Department of the United States has officially ruled that these lands belong not to the United States, but to the riparian owner. See opinion of Judge Battle, *ante,* page 39.

FIFTH SPECIFICATION OF ERROR.

Said Supreme Court of Arkansas erred in construing a certain note among the field notes of the United States Survey of Township 12 North, Range 6 East, as showing or tending to show that the *locus in quo* at the date of the survey was land and not water, especially as such field note was before the Secretary of the Interior when he officially found the *locus in quo* to have been at date of survey, water, not land.

See Judge Battle's opinion, *ante,* p. 47.

SIXTH SPECIFICATION OF ERROR.

Said Supreme Court of Arkansas erred in not holding the bottom of Cut Off Lake to belong to plaintiff in error as riparian owner after finding that said Cut Off Lake was a water boundary at the date of said United States Surveys of certain surveyed fractional sections admitted to belong to plaintiff in error.

See opinion of Judge Battle, *ante*, p. 48.

Judge Battle says: "The official maps show that 'Cut-off Lake' was the water boundary of fractional Sections 35 and 36."

SEVENTH SPECIFICATION OF ERROR.

Said Supreme Court of Arkansas erred in holding the letter of the Secretary of the Interior dated November 17, 1902, to have been properly excluded from evidence, and wholly disregarded by the Chancery Court of Arkansas, and in holding that said letter was of no binding force or effect upon any one.

See opinion of Judge Battle, Trans., p. 159. Also petition and assignment of errors, transcript, p. 15 *et seq.*

Also Bill of Exceptions, p. 145-146 and 147 of transcript, for offers for various purposes and rulings of trial court thereon with exceptions of plaintiff in error to such rulings.

EIGHTH SPECIFICATION OF ERROR.

The Supreme Court of Arkansas erred in affirming the ruling of the Chancery Court of Arkansas dismissing the complaint of plaintiff in error, and in not reversing said decree, and in not rendering a decree as prayed in said complaint. (Tr., 31.)

Also for offer and exception to ruling, transcript, p. 148, bottom.

STATEMENT AND ARGUMENT ON THE FACTS ACCORDING TO OFFICIAL SURVEYS.

For Government Plats, see Transcript, pp. 33 to 34.

For Government Field Notes, see Transcript, pp. 37 to 47.

For Selections and Approvals, see Transcript, pp. 48 to 49.

For Patents to State, see Transcript, pp. 35 to 36.

For Patents from State, see Transcript, pp. 50 to 52.

The selections, approvals and patents from the United States to the State of Arkansas of lands in Township 12 North, Ranges 6 and 7, called for the "whole of fractional Township" 12 North, Range 6 East, containing 7,236.78 acres, and the "whole of" Township 12 North, Range 7 East, except Section 16, containing 13,-815.67 acres. The two townships had been previously surveyed under direction of the United States Land Department by Samuel Johnson and John W. Garretson, (See township plats with transcript.) The east boundary of Township 12, Range 6, was surveyed by Samuel Johnson in October, 1840. His survey showed that in October, 1840, a body of water prevented the running of a line as the east boundary, except along the east side of fractional Section 36, in Township 12, Range 6, and the west side of Section 30, in Township 12, Range 7. Over eight years later, in December, 1848, and May, 1849, the subdivisional lines and meanders of Township 12, Range 6, were surveyed by John W. Garretson, and his survey showed water to still exist where shown by Samuel Johnson in October, 1840. The south boundary of Township 12, Range 6, was surveyed by Garretson in December, 1848, and shows a body of water then existing and reaching from fractional Section 35 to fractional Section 32 and no south boundary line of the township was run where this body of water appears on the township plat.

All of these surveys, made at widely different seasons of the year and by two different surveyors, who made their surveys over eight years apart, exactly agree in showing the existence, at all said times, of the body of water which made the township fractional.

The west boundary line of Township 12, Range 7, which was also the east boundary line of Township 12, Range 6, already referred to, is shown to be only 1 mile 59 chains and 64 links in length along fractional Sections 31, 30 and 19 in Township 12, Range 7. This was surveyed by Samuel Johnson in October, 1840. The sub-divisional lines and meanders were surveyed by Johnson in October and November, 1840, and July, 1841. His survey agrees with all the other surveys and shows fractional Sections 6, 7, 18 and 19 to be bounded by the same body of water referred to and shown by all of these surveys.

There is nothing on the official plats or in the field notes in any way indicating that the water marked "Sunk Lands" was any less permanent than that marked "Cut-Off Lake" or that marked "Right Hand Chute of Little River." In fact these names are shown as indicating different portions of one large body of water.

The Secretary of the Interior in his finding and opinion of November 17, 1902, which has been already referred to, holds that these surveys show the existence at the time they were made of a permanent body of water on which the land in these townships was meandered.

It is admitted by the defendant in error that the plaintiff in error is the owner of the fractional sections shown on the Government plat of Township 12 North, Range 6 East, meandered on the water shown on said plat, and lying east of the St. Francis river as it is shown on the Anthony survey. It is also admitted by the defendants in error that the plaintiff in error is the owner

of fractional Sections 18 and 19, Township 12 North, Range 7 East, which were meandered upon the same body of water above mentioned. The plaintiff in error's title to fractional Sections 6 and 7, Township 12 North, Range 7 East, is proven by conveyances and decrees put in evidence without objection at the trial.

The Government surveys and plats show that all of the above mentioned fractional sections were made fractional by said body of water and that the same body of water also made both the above mentional townships fractional. These surveys and plats show that the greater part of the west exterior boundary of Township 12, Range 7, was the water which made Sections 6, 7, 18 and 19 in said township fractional. The said official plat of Township 12 North, Range 6 East, states the sum of all areas therein to be 7,236.78 acres, and the said official plat of Township 12 North, Range 7 East, states the sum of all areas therein to be 14,829.97 acres.

The smallness of these areas was caused by the body of water above mentioned, and it was these surveyed areas that were selected, approved and patented to the State, not the unsurveyed water which bounded them. Township 12, Range 6, was expressly designated "fractional" in the selection, and in the patent thereof to the State. The thing that made it fractional was this water which was the boundary of the land granted.

While the selection and patent of Township 12, Range 7, conveyed the "whole of the township, except Section sixteen," the plat, survey and acreage show that it was and is a fractional township; and as the water line meandered along Sections 6, 7, 18 and 19 is an exterior line of the township, everything west of this water line is outside of the township and a grant to the state of the whole township could not convey, as a part of the township, itself, anything outside of one of its exterior boundaries, which, in this case, was the water line as

meandered on the official plat. The defendants in error in their answer have expressly and with great particularity, stated that these meander lines were run as boundaries, and it is wholly inconsistent for them, in the face of this statement to contend, as they do, that the grant to the State from the United States extended beyond these boundaries, while the subsequent grants from the State to its own patentees along the same meander lines did not extend beyond them. The truth, however, is that the meander lines were run, not as boundaries, but to show the sinuosities of the water which was the real boundary; and whatever rights the State acquired beyond the water line, were riparian rights, incident to the main grant and passed from the State to its grantees as riparian owners in the same way that they were acquired by the State.

It is admitted that the region shown as water on the Government plats has never been surveyed by authority of the United States.

There is nothing to show that the State ever regarded this unsurveyed region as land inuring to itself as swamp land under the Swamp Land Grant. There is evidence in the case to show that it did not so regard it. See deed from State of Arkansas to W. D. Mallory hereinbefore set out in the abstract and also in the transcript at page 139.

There is no evidence that the State ever applied to the United States Land Department to have this region surveyed so that it might be legally identified, selected, approved and patented to the State as swamp land. During the fifty-six years that have now elapsed since the passage of the Swamp Land Act of 1850, it does not appear that the State or the St. Francis Levee District ever claimed any ownership of these lands prior to 1900. The St. Francis Levee District was created in 1893 and the act of Legislature donating State lands to the St.

Francis Levee District was passed in 1893. The official finding of the Secretary of the Interior hereinbefore referred to, offered in evidence and made a part of the record in this case (see ante, pages 15, 17), shows that the Board of Directors of the St. Francis Levee District, treating these unsurveyed regions as still belonging to the United States, through its Chief Engineer, suggested to the Commissioner of the General Land Office, in a communication dated June 25, 1894, that these unsurveyed lands be donated by the United States to the State or to the St. Francis Levee Board; and it appears that subsequently, in 1901, the matter was again brought before the Land Department by the St. Francis Levee Board, and that the purpose of this action on the part of the Levee Board was to get the land on the Levee Board's tax books, so that it might be taxed for levee purposes, and that to accomplish this the Levee Board suggested that the lands should be surveyed under authority of the United States Land Department and sold by the Government to individuals who might homestead them.

(See ante, page 18.)

In the government plats and field notes the body of water shown on the township plats is designated variously as "sunk lands," "Cut-off lake," "a large lake," "sunk lands on the left bank of the St. Francis river," "St. Francis river sunk lands," "sunk lands on the left bank of the right hand chute of Little river," and "Hatchie Coon Sunk Lands," and this body of water is treated in all these surveys and the plats thereof as a single large lake through which the St. Francis river ran from north to south and through the southeast part of which the right hand chute of Little river flowed. The channel of the St. Francis river is definitely located on the Anthony plat, and, in the absence of proof to the contrary, this will be presumed to have been always its

location. The part of the bed of the lake which is now in controversy lay to the east of this channel. The plaintiff in error's ownership by riparian rights of the lake bottom which attached to the fractional sections around it, embraces the entire bottom of this lake east of the St. Francis river, as it is admitted to be located, and if this river is a navigable stream, this ownership extends to the east bank of the river; if unnavigable, to the middle thread thereof.

The Supreme Court of Arkansas erroneously construed a field note of John W. Garretson, a government surveyor, dated May 30th, 1849 (Transcript, page 115), made at the time of his survey of the *locus in quo* as a ground for its decree against the title claimed by the plaintiff in error. This field note is set out in full in the opinion of the Court. (Transcript, page 157). The Court, as we understand its opinion, holds that in this note the surveyor "indirectly says that the *locus in quo* might have been surveyed at the driest season of the year. A reading of this field note will, however, show that what was there said applied only to that part of the *locus in quo* which would have formed sections 24 and 25, township 12, range 6, had it not been covered by water, which the surveyor says was from 8 to 10 feet deep when he passed it in a canoe at so late a season of the year as December, 1848, and to that part which immediately adjoined section 36, township 13, range 6 on the south, which he says, on May 30th, 1849, was then covered by water so deep that it could not be waded. He was merely giving his reasons for not running lines or meanders for the very small part of the *locus in quo* which immediately adjoined the fragmentary exterior township boundary lines that appeared from surveys previously made by other surveyors. What he says cannot be construed to even inferentially intimate a possible sur-

vey at any season of the year of any part of the region in question other than the very small part of which he was speaking, nor does it amount to proof that even the small part referred to could be surveyed, at the driest season of the year. He speaks of it as a lake and says that it was then called such, and says that on May 30th, 1849, the water was "at a medium stage" and speaks of the "Hatchie Coon Sunk Lands" as "being so deep at this time that it cannot be waded."

This field note confirms the plats, in that it shows the permanent character of the water which covered the region in question. If this was a mere temporary overflow, it is indeed strange that the surveys of two different surveyors beginning in 1840 and ending in 1849, and made variously in the months of October, November, December, May and July, should all agree in showing at all said times the presence of the same body of water. The plaintiff in error, claiming title by reason of the facts proven by those surveys, is entitled to the benefit of their true meaning.

Moreover, this remark by Surveyor Garretson was with all the field notes and facts before the Land Department and the Secretary of the Interior when he officially found that the *locus in quo* was a permanent body of water at the time of these surveys, in the following language:

"The field notes and plats of these surveys show that what are now reported to be unsurveyed lands were at the date of the township surveys covered by permanent bodies of water that were meandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 *to* 15 *feet."*

REVIEW OF WITNESS ANTHONY'S TESTIMONY.

See Transcript, pages 128 to 138.

In 1900 one James Anthony, a civil engineer in the employ of the St. Francis Levee District, conceived the

idea that the St. Francis Levee Board, which had unsuccessfully applied to the Land Department of the United States to have the *locus in quo* surveyed and patented to individuals for the purpose of getting it on the levee tax books, might itself induce speculators to accept a conveyance from the Levee Board of the *locus in quo* on the theory that it had passed to the state of Arkansas as swamp land under the Swamp Land Grant, and to the St. Francis Levee District under the donation act of 1893. Thereupon Anthony made the survey, the plat of which he filed in the recorder's office of Poinsett county, and which will be found inserted at the front page of this brief. No speculators of sufficiently venturesome spirit being forthcoming, Anthony himself took an option from the Levee Board on this unsurveyed region at fifty cents per acre. This option was taken in the name of one Charley Bodkin (see Anthony's deposition, page 132 of Transcript), but was assigned to Anthony. A deed was afterwards made to Bodkin by the Levee Board, but in Anthony's interest; and Anthony himself says that he paid the fifty cents per acre. Anthony's contract with the St. Francis Levee Board was that, in consideration of his services in securing evidence to enable the Board to recover for the value of timber cut on these unsurveyed lands, the Board was to pay him twenty-five per cent of all sums recovered and collected from the timber cutters. Anthony says it was his duty under that contract to furnish the Levee Board with the necessary evidence to prosecute people that depredated on their unsurveyed lands. The Levee Board through its Chief Engineer had applied to the United States Land Department to have these very lands surveyed for the purpose of having them pass into the hands of private parties, and thus get them on the tax books, really disclaiming title itself; and yet it enters into an arrangement with Anthony for the

prosecution of those cutting timber on these unsurveyed lands, the title to which it was not then claiming. Anthony is the representative of the defendants in regard to these lands, and in regard to this suit, and has given "these gentlemen" who purchased from Charley Bodkin (the straw grantee of the Levee Board), assurance that he will furnish evidence to prove their title to the *locus in quo*.

He never signed a warranty deed to these unsurveyed lands, but considers himself responsible for the covenants of warranty in the Bodkin deed. In so far as the warranty in that deed goes, he admits that he has a vital interest in the determination of this controversy. It will be readily gathered from any unprejudiced reading of the Anthony deposition, viewed in the light of his officious making of the private survey of this unsurveyed region, that the real parties to this suit are the plaintiff in error, who bought in good faith all the surveyed land around this body of water in full reliance on the United States and state patents under which it derived its rights, as a riparian owner, to go to the St. Francis river, and a speculating engineer who persuaded the Levee Board to give him an option on the *locus in quo* which both the Levee Board and Anthony knew had never been surveyed or patented to the state, and which the Levee Board had unsuccessfully tried to get the United States Land Department to survey and patent to third parties. Finally the Levee Board makes a deed to Bodkin at fifty cents per acre, though this same Anthony is the real purchaser. This imaginary title has been conveyed from Bodkin to Williamson, and from Williamson to Bigelow Brothers and Walker; but still Anthony considers himself liable under the covenants of warranty contained in the Bodkin deed, and is carrying out his contract to furnish evidence to prove the titles of the defendants in error to

the *locus in quo*. Unless he can induce this court to obliterate and destroy the plats and field notes of over fifty years ago, to overrule and set aside the ruling of the Commissioner of the Land Department, affirmed by the Secretary of the Interior, we fear he will never be able to perform his contract. The United States government has disclaimed any title to the *locus in quo* in favor of the riparian owners, and will never reconsider such decision either through its Land Department or through its courts; for to do so would be contrary to the rulings of this court from *Hardin* v. *Jordan to Whittaker* v. *McBride,* decided by Justice Brewer in April, 1905. Any such attempt would be calculated, as stated by Mr. Justice Bradley in *Hardin* v. *Jordan,* to render titles uncertain, and to derogate from the value of natural boundaries like streams and bodies of water, and be grossly inequitable as against the rights of the riparian owner, plaintiff in error in this case.

BRIEF.

AS TO FEDERAL QUESTION.

If the Supreme Court of Arkansas had held that, as a matter of local law affecting riparian rights in general, the plaintiff in error could have no title to the bed of this lake, even conceding the official surveys of the United States Government to have correctly shown it to have been a permanent body of water, then no Federal question would have been presented by such ruling. But no question of local law was raised in this case, and the claims of the plaintiff in error were not denied by the defendants in error nor by the court on the ground of any such local law, those claims being thus conceded in so far as they related to the law of Arkansas governing riparian rights.

The substance of the claims of the defendants in error as shown and put in issue by the pleadings and the substance of the ruling of the Chancery Court of Poinsett County, Arkansas, and of the ruling of the Supreme Court of Arkansas as shown by the record and the opinion of the Supreme Court, is, conceding that the local law of Arkansas does not preclude, but sustains, the ownership of the beds of unnavigable lakes by riparian owners, that as a matter of fact, there never existed any lake in this instance, notwithstanding the contrary showing of the official records of surveys in the Land Department of the United States, under and by reason of which the plaintiff in error claims title to the *locus in quo*.

A Federal question is thus presented by the record in this case because:

The plaintiff in error has a complete record title to the *locus in quo*, and that record title is as follows:

1st. The official plats and field notes of surveys on

file and of record in the General Land Office of the United States.

2nd. The patents, without reservation, from the United States to the State of Arkansas of fractional sections and parts of sections abutting on the lake or permanent body of water which, as shown on said plats and by the field notes of said surveys covered the *locus in quo*, which patents expressly recite that the grants therein made are "according to the official plats of survey of said land returned to the General Land Officer, by the Surveyor General," whereby said official plats of survey are made parts of the patents, descriptive of the property and rights intended to be conveyed and must be read into the grants therein contained; which patents also contain habendum clauses in the following form: "together with all the rights, privileges, immunities and appurtenances thereto belonging."

3rd. The patents, without reservation, by the State of Arkansas of said fractional sections and parts of sections abutting on said body of water, carrying with them all rights and appurtenances, including riparian rights as reserved by the state from the United States, and mesne conveyances without reservation to plaintiff in error.

Towell v. *Etter*, 69 Ark., 34;
Crill v. *Hudson*, 71 Ark., 390.

That the grantees of the United States take the beds of non-navigable lakes and ponds around which lands granted by the Government are meandered on the official plats of surveys was settled by this court in the case of *Hardin* v. *Jordan*, 140 U. S., 371, 35 L. Ed., 428, cited in the letter of the Secretary of the Interior of November 17, 1902 (see *ante*, p. 15); which case has established the rule consistently adhered to by this court, and which the Land Department recognizes as controll-

ing its action in connection with all such grants, as is fully shown by reference to the Secretary's letter above mentioned.

The rule by which the grantee of the State of Arkansas acquires the same riparian rights which the State acquired from the United States is the common law rule by which the beds of non-navigable bodies of water belong to the owner of the abutting lands and pass with them to his grantee; which rule exists in the State of Arkansas and has not been denied or questioned in this case.

Warren v. *Chambers,* 25 Ark., 120, loc. cit., p. 122;

Harrison v. *Fite,* 148 Fed. Rep. (Adv. Sheets No. 7), p. 781 (U. S. Circuit Court of Appeals, 8th Circuit.

Taylor v. *Armstrong,* 24 Ark., 102, loc cit., p. 106;

Packet Co. v. *Sorrels,* 50 Ark., loc. cit., p. 472.

"If the State of Indiana got a title, it gave one." Mr. Justice Holmes, in *Kean* v. *Calumet Canal & I. Co.,* 190 U. S., 452, loc. cit., 461, 47 L. Ed., 1134, loc. cit., 1137. Which statement of the law applies with equal force to the State of Arkansas.

Upon the face of the record, therefore, the title of the plaintiff in error to the *locus in quo,* beginning with the recorded plats of survey in the Land Office, is complete.

The decree of the Supreme Court of Arkansas against the title claimed by plaintiff in error, based on a misconstruction of the recorded surveys under which the plaintiff in error claims title, or based on an unwarranted finding of fact from incompetent, irrelevant and immaterial evidence bearing on the correctness of those surveys, or based on both such grounds, against the contention of the plaintiff in error and against the official

findings of the Secretary of the Interior, plainly presents a Federal question; because, it touches the title of the plaintiff in error to the land in controversy, at the point where that title emanated from the United States, calls in question the authority given by law to the Secretary of the Interior to determine what land is of the character embraced within the terms of the Swamp Land Grant, and seeks to deprive the grants contained in the patents from the government of the scope and effect which they derive from the official surveys recorded in the Land Department by challenging the correctness of those surveys and also attempting to construe them against the title claimed thereunder; which surveys and the plats and field notes thereof are, as a matter of law, conclusive against all incompetent, irrelevant and immaterial oral evidence of the character offered in this case for the purpose of impeaching them.

Such a final judgment or decree in the highest court of the State of Arkansas, in which a decision in the suit could be had, manifestly brings this case within the jurisdiction of this court on a writ of error, because there is drawn in question the validity of an authority exercised under the United States and the decision is against such validity, and because such judgment or decree is against a title, right, privilege and immunity especially set up and claimed by plaintiff in error under a statute of, and commission held and authority exercised under the United States.

Lytle v. *Arkansas,* 63 U. S., 193, 16 L. Ed., 306;

French-Glenn Live Stock Co. v. *Springer,* 185 U. S., 47, 46 L. Ed., 800;

French v. *Fyan,* 93 U. S., 169, 23 L. Ed., 812;

De Cambra v. *Rogers,* 189 U. S., 119, 47 L. Ed., 734 (and cases cited);

Shively v. *Bowlby,* 152 U. S., p. 1, 38 L. Ed., 331;

Dower v. *Richards,* 151 U. S., 658, 38 L. Ed., 305;

First National Bank of Xenia v. *Stewart,* 114 U. S., 224, 29 L. Ed., 101;

U. S. v. *Ross,* 92 U. S., 281, 23 L. Ed., 707;

Thompson v. *Bowie,* 4 Wall., 463, 18 L. Ed., 423.

Conners v. *Meservey,* 76 Iowa, 691;

U. S. v. *Low,* 16 Pet., 162, 10 L. Ed., 923;

Kirby v. *Lewis,* 39 Fed. Rep., 66.

In *Lytle* v. *Arkansas, supra,* on a writ of error from this court to the Supreme Court of Arkansas, it was held that:

> "Under the 25th section of the Judiciary Act it is not material whether the invalidity of a title was decreed in the State court upon a question of fact or law. The fact that the title was rejected in that court authorizes this court to re-examine the decee."

And Mr. Justice Catron, in the opinion of the court, further says:

> The decision of the Supreme Court of Arkansas drew in question an authority exercised under the United States, to-wit: that of admitting Cloyes to make his entry; and the decision is against that validity, and overthrew his title, and is, therefore, subject to be re-examined and reversed or affirmed in this court, on all the pleadings and proofs which immediately respect the question of the proper exercise of authority by the officers administering the sale of the public lands of the United States.

In *French-Glenn Live Stock Co.* v. *Springer, supra,* on a writ of error from this court to the Supreme Court of Oregon, it was held that:

> "A Federal question is presented by a contention in the State Courts and in the Supreme Court of the United States, in an action to recover pos-

session of a tract of land patented to the State of Oregon under the Swamp Land Grant, that a proper construction of the survey and patents gives riparian rights covering the land in dispute, and that it is not competent to overcome such rights by evidence affecting the legal import of the plats and patents."

In *Shively* v. *Bowlby, supra,* on a writ of error from this court to the Supreme Court of Oregon, it was held that:

"A state judgment that the grant from the United States passed no title or right, as against the subsequent deeds from the state, in lands below high water mark, is a direct adjudication against the validity of a right or privilege claimed under a law of the United States, and presents a Federal question within the appellate jurisdiction of this court."

In *First National Bank of Xenia* v. *Stewart, supra,* this court said:

"The law requires an open and visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences."

And the court cites *U. S.* v. *Ross, supra,* and *Thompson* v. *Bowie, supra,* to the same effect.

In *Dower* v. *Richards, supra,* on a writ of error from this court to the Supreme Court of California, it was held that:

"When the question decided by the State Court is not merely the weight or sufficiency of the evidence to prove a fact, but of the competency and legal effect of the evidence as bearing upon a question of Federal law, the decision may be reviewed by this court."

In *Conners* v. *Meservey, supra,* the Supreme Court of Iowa, where an attempt had been made to prove that the land in controversy was not swamp land at the date

of the Swamp Land Grant by testimony as to its condition at the date of the trial, held that;

> "An objection that the proposed evidence was immaterial was properly sustained, for the reason that the question as asked related to the time when the witness was examined. It was immaterial what the character of the land then was. The material question was, what was its character on the twenty-eighth day of September, 1850?"

In *De Cambra* v. *Rogers, supra,* on a writ of error from this court to the Supreme Court of California, this court said:

> "But it is well settled that the decision of the Land Department upon questions of fact is conclusive on the courts." (Citing cases.) "It is hardly necessary to say that when a decision has been made by the Secretary of the Interior, courts will not entertain an inquiry as to the extent of his investigation and knowledge of the points decided or as to the methods by which he reached his determination."

In *United States* v. *Low, supra,* this court said:

> "The official return of the Surveyor General has accorded to it the force of a deposition. So we held in the case of *United States* v. *Beward,* 16 Pet., 143, and *United States* v. *Hanson,* 16 Pet., 196, to which we refer."

We deem that enough has been said under this head to indicate the Federal nature of the questions involved, which also will fully appear from the general discussion of the case to follow.

POINTS AND AUTHORITIES ON THE MERITS.

I.

The *locus in quo* has never been selected by the state of Arkansas as land accruing to it under the Swamp Land Grant of September 28th, 1850, has never been held by the Secretary of the Interior to be land of that character, but has been held by him not to be of that character, and it passed to the state from the United States only by virtue of the riparian rights incident to the grant of the abutting lands.

If the *locus in quo,* which is definitely outlined by the official surveys of the abutting lands, was as is shown by those surveys, at the date of the surveys in fact a permanent body of water or lake, then the title of the United States to the bed thereof was, so far as its subsequent conveyance thereof was concerned, according to the local law, that of a riparian owner, and thereafter, no matter whether the lake filled up or dried up, the *locus in quo* passed with every succeeding grant of the abutting fractional sections or parts of sections, as held by the Supreme Court of Arkansas in *Towell* v. *Etter,* 69 Ark., 34, and *Crill* v. *Hudson,* 71 Ark., 390. See also *Harrison* v. *Fite,* 148 Fed. Rep. (Adv. Sheets No. 7), p. 781, and *Hardin* v. *Shedd,* 190 U. S., 508, 47 L. Ed., 1156.

At the time the plaintiff in error acquired by purchase in 1899 and 1900 (See Transcript, pp. 53 to 72), the lands abutting on this lake, they were shown by the official surveys which had remained unquestioned by the state and all others for fifty years, to be riprarian lands, and this court had, in *Hardin* v. *Jordan* (140 U. S., 371), settled the rule under which plaintiff in error acquired the ownership of the lake bed. The plaintiff in error is seeking to have its title thus acquired in good faith protected, contending that such surveys should be

and are, conclusive against adverse claimants pretending to hold the title thereto under a genral donating act of the state legislature which had no reference to these lands.

II.

Meander lines along or near the margin of a stream or other body of water are run to ascertain the quantity of public land sold, and are not boundary lines; *the waters themselves constitute the real boundary.*

Railroad v. *Schurmeir,* 7 Wall., 272, 19 L. Ed., 74.

By the common law, fresh water lakes and ponds, except the great navigable lakes, belong to the owners of the soil adjacent, who own the soil *usque ad filium aquae.*

A patent for government land whose boundary is described by a meander line along a small inland lake conveys strips and tongues of land which project into the water beyond the meander line.

Where the official plat of government land shows the general form of the lake and the surrounding fractional lots adjoining and bordering on the same, and the patents issued refer to this plat for identification of the lots conveyed, the lots extend to and are bounded by the lake; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow.

Hardin v. *Jordan,* 140 U. S., 371; Lawy. Ed., Vol. 35, p. 428;

Mitchell v. *Smale,* 140 U. S., 406; Lawy. Ed., Vol. 35, p. 442 *et seq.;*

Whittaker v. *McBride,* 197 U. S., 510; 49 L. Ed., 859;

Gould on Waters (Ed. 1900), Sec. 196, p. 379;

Note to *Willow River Club* v. *Wade,* L. R. A., Vol. 42, p. 305;

Grand Rapids & Indiana R. Co. v. *Butler,* 159 U. S., 87; 40 L. Ed., 85;

Harrison v. *Fite,* U. S. Circuit Court of Appeals, 148 Federal Rep., p. 781.

III.

Plats and field notes are the best evidence, and, in fact are now the only available evidence of the condition of *locus in quo* at the dates of the surveys from 1840 to 1849 and the date of the Swamp Land Grant, September 28, 1850.

Opinion of Judge Caldwell in *Kirby* v. *Lewis*, 39 Fed., p. 66.

Whittaker v. *McBride, supra.*

Judge Caldwell, in the above cited case, uses the following language:

"The value of field notes as evidence was settled by the Supreme Court of the United States in the case of *United States* v. *Low,* 16 Pet., 166, where the court says: 'The official return of the surveyor general has accorded to it the force of a deposition. So we held in the case of *United States* v. *Breward,* 16 Pet., 147, and *United States* v. *Hanson,* 16 Pet., 196, to which we refer.'

"They rank as the deposition of a surveyor charged under oath with the duty of noting on the spot, and at the time he makes the survey, the quality of the land."

He further says: "The following is a part of the preamble of an act of the legislature (of Arkansas) approved March 17, 1885:

" 'Whereas, more than thirty-four years have now elapsed since such date (28th September, 1850,) and but few persons are now alive who can testify to the character of such land as it appeared on the 28th day of September, 1850.'

"This is a legislative recognition of the difficulty of finding living witnesses to testify intelligently on this subject. The testimony must relate to the condition of the land at the date of the grant."

In *Hendry* v. *Willis,* 33 Ark., 833, where the defendants had undertaken to prove that the premises in controversy were not in fact swamp or overflowed land

within the terms of the act of September 28, 1850, the Supreme Court of Arkansas said:

> The proof refers to the time of trial, nearly thirty years after the act. From divers natural and artificial causes, the surface of the earth is continually changing, and lands which were wet, overflowed and unfit for cultivation in 1850, may be now high and arable; and so *vice versa*. Loc. cit., 837.

The testimony offered by the defendants in error for the purpose of discrediting the official returns of the surveyors amounted to no evidence. No witness having knowledge of any facts even nearly contemporaneous with the surveys was produced by the defendants in error. There was nothing in any of this testimony inconsistent with the existence of conditions in 1850 precisely as shown by the plats and field notes of the surveys. As was said by this court in *Hardin* v. *Jordan, supra,* "There should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian land."

It is not to be assumed on the strength of such testimony as was offered in this case that the two surveyors, Johnson and Garretson, failed to survey so much land where their returns showed water, which land, if it existed, they could not have failed to see at some one of the numerous times when they were separately in the field between October, 1840, and May 30th, 1849. They evidently performed their duties with conscientious care. One of the evidences of this fact is the field note of Garretson dated May 30th, 1849, explaining with great explicitness why he did not run lines and meanders from corners on the short boundaries which had been run by previous surveys. The more these surveys are studied the more convincing they are that the water shown by them was of a permanent character. In October, 1840, Samuel

Johnson was prevented for a distance of nearly four miles from running any boundary line between townships 12-6 and 12-7 by the same body of water which Garretson found in December, 1848. Even if, as the witness Anthony testified, sloughs are now to be found along some of the meander lines, their presence there at this time, or in 1876, proves nothing as to conditions existing from 1840 to 1850. If surmises are to be permitted, it is more reasonable to conjecture that this lake at some points was deepest around its edges and that the recession of its waters left sloughs along the meander lines, than to conjecture that there was really no lake there and that there existed land which should have been surveyed where the return of the surveyors showed one expanse of water extending to the meander line.

Likewise there is nothing to connect the presence at this time of an alleged "ore-like substance" lying loosely upon the surface of the ground with conditions existing fifty years ago. There is nothing to show that this "ore-like substance" existed there at that remote period and assuming that it did so exist and that conjectures are permissible with regard to it, as reasonable a guess as any is that it lay on the bottom of this lake and has been uncovered by the recession of its waters.

All such evidence comes within that class declared by this court to be irrelevant, because there is "no open and visible connection between the principal and evidentiary facts and the deductions from them" and the law "does not permit a decision to be made on remote inferences," (*First National Bank of Xenia* v. *Stewart,* 114 U. S., 224); and as a matter of law, the objections of the plaintiff in error on the ground of its incompetency, irrelevancy and immateriality for the purpose of defeating the title claimed by the plaintiff in error under the surveys of the Land Department and patents from the United States, should have been sustained.

IV.

Decision of the Secretary of the Interior, based on plats, field notes and other records, is final on question of whether the fractional sections owned by plaintiff in error were properly meandered on a permanent body of water and on the question of whether or not the region shown as water on the United States government plats has ever been selected and approved to the State of Arkansas as swamp land under Swamp Land Grant.

Smith v. *Hollis,* 46 Ark., 17;
Hendry v. *Willis,* 33 Ark., 833;
Williamson v. *Baugh,* 71 Ark., 491.

In the last above cited case the Supreme Court of Arkansas cites the following cases:

Chandler v. *Calumet, etc., Co.,* 149 U. S., 79; 37 L. Ed., 657;
McCormick v. *Hayes,* 159 U. S., 332; 40 L. Ed., 171;
Rogers Locomotive Works v. *Emigrant Co.,* 164 U. S., 559; 41 L. Ed., 552.

To the same effect will be found:

Peyton v. *Desmond,* 129 Fed., 1;
DeCambra v. *Rogers,* 189 U. S., 120; 47 Law Ed., 734.

V.

Nothing can pass to the state as swamp land until identified as such by the Secretary of the Interior, the officer charged with that duty by the Swamp Land Act itself.

Mich. Land & Lumber Co. v. *Rust,* 168 U. S. p. 589; Vol. 42; L. Ed., p. 591.

VI.

Parol evidence as to condition of *locus in quo* at date of Swamp Land Grant is inadmissible unless Sec-

retary of the Interior has failed or refused to pass on that question; and in case at bar he not only has not failed or refused, but has finally passed on the question in regard to the identical lands in controversy. This unsurveyed region was manifestly not included as swamp land in the selections, approvals and patents, and the Secretary of the Interior has officially declared that it was not so included because it was not swamp land.

Williamson v. *Baugh*, 71 Ark., 491;
McCormick v. *Hayes*, 159 U. S., 332; 40 L. Ed., 171;
Chandler v. *Calumet, etc., Co.*, 149 U. S., 79; 37 L. Ed., 657.

"Parol evidence is inadmissible to show, in opposition to the concurrent action of Federal and state officers having authority in the premises, that certain lands were in fact, at the date of the Swamp Land Grant of 1850, swamp and overflowed land."

Syllabus in *McCormick* v. *Hayes, supra.*

In *Chandler* v. *Calumet, etc., Co., supra,* 36 Fed. Rep., 665 (affirmed in 149 U. S., 79), it was held (syllabus by the court) that "Under the provisions of the act of Congress of September 28, 1850, conferring swamp lands, and the Michigan act of June 28, 1851, evidence *in pais* that a parcel of land was, at the date of the first named act, of the quality therein described, is incompetent after the Secretary of the Interior has discharged his duty, and approved lists of swamp lands made under his directions from the field notes of survey, which lists do not contain the land in question, although embracing other lands in the township in which it lies, and where no judicial or other proceedings have been had to modify his action, or to extend or renew his powers over lands not so approved. In such case the state cannot claim that lands not so approved passed to it under the language of the act of Congress."

In *Williamson* v. *Baugh, supra,* the Supreme Court of Arkansas says, in regard to the decisions of the United States Supreme Court:

"These decisions hold that as the swamp and overflowed land granted to the state was, under the act, to be selected by the Secretary of the Interior, his decision in reference to the character of such land is, in the absence of fraud, final, and cannot be overturned by parol evidence in a collateral proceeding. Those cases seem to establish the rule that in action at law to recover such land by parties holding under the state parol evidence to establish the nature of the land can be resorted to only in cases where the secretary has failed or refused to act, and has made no decision as to the nature of the land."

VII.

The total region in controversy (so far as it is now or ever was covered by water) will be presumed to be a non-navigable body of water from meander lines of fractional sections owned by appellant to channel of St. Francis river, definitely located on Anthony plat.

Little Rock, M. R. & T. R. R. Co., v. *Brooks,* 39 Ark., 403; (see p. 408 of opinion);

Am. & Eng. Enc. of Law, Vol. 21, p. 429; Note 6 to Subdv. C;

Harrison v. *Fite,* 148 Fed. Rep., 781 (U. S. Circuit Court of Appeals, 8th Circuit).

Unlike the case of *Harrison* v. *Fite, supra,* involving the bed of Big Lake in Mississippi County, Arkansas, the title of the riparian owner to the lake bed is not in this case being contested by persons claiming the right to use the lake on the ground that it is navigable water. In the case at bar the basis of the claim of the defendants in error is the allegation that the *locus in quo* never was anything but land, contrary to the showing of the official survey. Questions of navigability and non-navigability do not therefore enter into the consideration of this case.

If navigable, the recession of the water of the lake has left the title to the lake bed in the riparian owner; if non-navigable, as is the legal presumption, the title to the lake bed always was in the riparian owner. On this general subject the statement of the law by Judge Hook, while having no important bearing on the issues arising in this case, may well be quoted as being a compact and comprehensive statement of the American law. He says:

"Courts take judicial notice of the navigable character of our important rivers and inland lakes—those that are so within our common knowledge; but there are many of such insignificant capacity and doubtful utility that the question, being one of fact, is to be determined by the evidence produced, and in such case the burden of proof rests upon him who asserts the existence of the public servitude."

VIII.

The common law governing riparian ownership prevails in Arkansas; and the rule that the owners of land abutting on a non-navigable lake or pond own the soil under the water fully prevails in this state.

Warren v. *Chambers,* 25 Ark., 120.
Harrison v. *Fite,* 148 Fed. Rep., p. 781;
Organ v. *Memphis* & *Little Rock R. R. Co.,* 51 Ark., p. 235;
Nix v. *Peiffer* (Ark), 83 S. W., 951;
Taylor v. *Armstrong,* 24 Ark., p. 102;
Packet Co. v. *Lowells,* 50 Ark., l. c., 471;
Reichert v. *St. Louis* & *S. F. R. Co.,* 51 Ark., 491.

"At common law the bed of a river belongs to the government so high up only as it is navigable in a technical sense, that is, as far as the tide ebbs and flows; and above that point it belongs to the riparian owners; each—where their lands lie on opposite sides of the river—owning to the middle of the stream."

From Opinion of the Court in *Warren* v. *Chambers, supra,* p. 122.

For able exposition and discussion of the common law as to riparian ownership see Judge Bradley's opinion in *Hardin* v. *Jordan,* 140 U. S., loc. cit., 389; Vol. 35, Lawyers' Ed., loc. cit., p. 435, *et seq.*

IX.

Where river runs through lake or bayou, the main channel will be the boundary in dividing up the bottom, in case of recession of the waters, among owners of fractional sections meandered on such lake or bayou.

Gould on Waters (Ed. 1900), Sec. 196, pp. 380, 381, and cases cited therein;

Felder v. *Bonnett* (South Carolina), 2 McMullen's Law, —; 37 Am. Decisions, 545;

Cessill v. *State,* 40 Ark., 501;

Harrison v. *Fite,* 148 Fed. Rep., 781.

Mr. Gould says: "Thus the term 'river,' when employed to designate a boundary by land owners whose title extends *usque ad filium aquae,* means in law the center of the stream, and *prima facie the center* of its main channel, where there is more than one," 379-380. * * * "Even a marsh, bayou, or swamp, may constitute a well defined boundary of a tract of land, and the thread of the channel or stream flowing through it, if any, may be regarded as the boundary line," p. 381.

X.

CASES CITED AS CONTRA DISTINGUISHED.

In all cases decided by the Supreme Court of the United States where meander lines, which evidence showed failed to go to actual water on which they purported to be meandered, were held boundaries of grant, the result was to leave the title in the United States, and in most of them the United States was asserting title to the land beyond the meander lines, by surveys prelimi-

nary to patents, or by the actual issuance of patents; while in the case at bar the United States has officially and expressly disclaimed any title to land beyond meander lines in favor of riparian owners, and repeatedly declined to make surveys.

The opinion of the Supreme Court of Arkansas, affirming the judgment of the Chancery Court of Poinsett County, bases its decision on the opinions of this court in *Horne* v. *Smith, Niles* v. *Cedar Point Club,* and *French-Glenn Live Stock Company* v. *Springer* under an evident misconception of the effect of those decisions, and overlooking the essential dissimilarity of the *admitted* and proved facts in those cases to the facts in the case at bar as established by official records and findings, which cannot be legally overthrown by wild conjectures and remote inferences from incompetent testimony based mostly on examinations of the *locus in quo* just recently made, over fifty years after the official surveys, or else founded on hazy recollections of random and desultory observations alleged to have been made twenty-five to thirty years after the time in question at the earliest, and generally far later.

In the three cases cited by Judge Battle, the additional facts considered in construing the official survey were either admitted or proved by explicit testimony of persons having knowledge of the *locus in quo* contemporaneous with the survey, while in the case at bar, the witness Anthony only claimed to have known the country since 1874, twenty-five years and more after the official surveys, and did not in fact survey it until 1900 (Transcript, 130 and 131). Witness Biggs had "just gone over it" hunting and trapping since 1888 (Tr., p. 118), and had assisted Anthony in his survey with witness Odom, who shows no prior knowledge of it (Tr., 126), while witnesses Peters and Davis had known the country first in the late eighties (Tr., 86 and 103), and had exam-

ined it in detail only since the Anthony survey. Witness Varner who had known the place since his early childhood in 1844, testified to the filling up only (Tr., 108), and had no further knowledge on the subject.

The testimony of all the witnesses is more or less indefinite, inexplicit, disconnected, and uncertain, including even that based upon the recent private survey and examinations, which evidence is naturally somewhat more detailed than the recollections from general observations of the country casually made at earlier dates without specific direction of attention to the *locus in quo* now in controversy.

From this testimony as to *present conditions* it is apparent that the surface of the *locus in quo is now* somewhat uneven, checked with sloughs, and bearing more or less vegetation and undergrowth and some moderate sized timber, apparently for the most part at least of such varieties as grow to some extent in shallow waters free from swift and continuous currents.

In fact, there is nothing in this testimony at all irreconcilable with the official records and findings showing the place to have been a permanent body of water or lake over fifty years before, when the various official surveys were made, as ample time has elapsed for the changes which have taken place in recession of the waters, filling up or growth of timber so far as the testimony shows. On no theory can the oral evidence be held to demonstrate an obvious error of the government surveyors or Land Department, as the law requires beyond question for the overthrow of official surveys, to say nothing of the findings of the Secretary of the Interior.

It is not a question of the weight of the evidence, but a case of simply no evidence contradicting the official records—a pure question of law, which the Arkansas court erroneously decided by treating such remote and uncertain testimony as if certain and contemporaneous,

and competent to base a finding thereon in opposition to official plats, field notes and surveys, and as if no ruling of the department to the contrary existed.

Now to differentiate the cases relied upon by our opponent as authority for the decision founded upon this evidence, to which we have objected as incompetent for such purpose from the first, it will be seen that neither this court nor others have received such evidence as supporting such a finding heretofore.

HORNE v. SMITH, 159 U. S., 40; 40 L. Ed., 68.

In this case owners of fractional sections meandered on "Indian River" by the survey sought to eject parties in possession of land beyond the meanders and between them and Indian river, as actually located. An examination of this case shows no dispute at all of the facts claimed by defendants, but on the contrary it seems to have been admitted, or at least proved by unquestioned evidence, that there was at the time of the survey as well as of the trial, such a body of land between the meander line and the river, as well as a distinct bayou or savannah on the meander line, and no question is raised as to the competency of the evidence establishing these facts, which apparently were not denied, but the plaintiff seems to have based his claim wholly upon the words "Indian river" on the plat, claiming that as his boundary. The court held the words "Indian river' in the survey to have been an error, and held the meander line or bayou to be the boundary, thus apparently leaving the title to the land beyond in the United States. No action by the Land Department appears in the case. This decision in no wise militates against the claimants of riprarian rights as pointed out by Mr. Justice Brewer in *Whitaker* v. *McBride*, 197 U. S., 510, 49 L. Ed., 859, distinguishing all of these cases.

NILES V. CEDAR POINT CLUB, 175 U. S., 301, 44 L. Ed., 171.

In this case a tract of land called by the surveyor "flag marsh," lay between Lake Erie and the northern meander line of claimant Niles' fractional sections, by virtue of which a riparian right to the marsh was claimed. The state of Ohio had, soon after the issuance of the patents for the land south of the "marsh," selected the marsh as swamp land, *which selection the secretary disapproved, marking it "not swamp land." The Land Department subsequently surveyed and issued patents to the tract* to homesteaders, from whom the Cedar Point Club claimed title. The case was tried on an *agreed statement of facts*, from which it appears that "at the time of the survey the waters of Lake Erie *were above their ordinary stage, and there was more than the usual volume of water standing upon the land in controversy* flowing from the "interior," while in the case at bar the surveyor's note urged against us, the only evidence on the subject, says the water was *"at a medium stage"* at the time of the survey.

Judge Brewer says the following in the Niles case: "It was called a marsh by Rice, the first surveyor, is so styled on the plat, and the *conditions as disclosed by the agreed statement indicate that it* was a body of low, swampy land, partly boggy and partly dry, sometimes subject to inundations from Lake Erie or the overflow of adjacent streams, but *not permanently covered with water.*" It will be observed that in this case not only was no question raised as to the extraneous evidence, but that the ruling of the Land Department was precisely the opposite to its ruling in the case at bar. Under the wholly different conditions of this case as shown the fact that the court held the meander line of the marsh to be a boundary affords no precedent against our contentions herein.

FRENCH-GLENN LIVE STOCK CO. v. SPRINGER, 185 U. S., 47, 46 L. Ed., 800.

The plaintiff in this case claimed the bed of Malheur lake, because the government patent of 1877 or plat meandered their northern boundary on the lake, and offered evidence to show the existence of such lake on their boundary at the time of the survey. The title of the defendants in possession of the land does not appear, but they offered evidence to show that the lake was outside the side lines of the meander line in 1877, when the survey was made. There does not appear to have been any action by the Land Department affecting the controversy, and evidently the finding that said lake was not contiguous to plaintiff's boundaries at the time of the survey was supported by testimony based on contemporaneous knowledge of the conditions, as the survey was comparatively recent, and no question is raised as to the competency of the evidence offered. The effect of the finding against plaintiff was apparently to leave the title in the United States, but the case can have no application to the present controversy, where no such contemporaneous evidence was offered and the government has officially disclaimed title in favor of plaintiffs in error as riparian owners.

It will be observed that the Supreme Court of Arkansas does not mention *Whitaker* v. *McBride*, 197 U. S., 510, 49 L. Ed. 859, in citing the above cases. In the latter case the court upheld the action of the Land Department in favor of the riparian owner in refusing to survey an island of 22 acres in 1897, where the official survey of 1876 had omitted it, there being nothing to indicate mistake or fraud on the part of the surveyors, just as in the case at bar.

McDade v. Bossier Levee Board, (Sup. Ct. La.), 33 South. Rep., 628.

An examination of the case of *McDade* v. *Bossier Levee Board, supra,* will disclose that the court based its decision on the following grounds:

(1) All of Sections 11 and 12 and all of the south half of Section 2, in the township, had been approved and patented by the United States to the state of Louisiana. "Red Shoot Lake" was a long, narrow body of water that ran diagonally through Section 11, from the northwest to the southeast corners thereof, and cut off the southwest corners of Sections 2 and 12.

(2) These sections had been subdivided into quarters, fractional quarters and lots, some of which abutted on the lake.

(3) By an act of the Louisiana legislature of 1855, being, as the court stated, the very act under which McDade's grantors acquired title from the state to the abutting land, it had been declared that lakes of the character of "Red Shoot Lake" *"are required to be treated as land, and to be surveyed and sold as such."*

The court, therefore, held that, the sections having been granted to the state in their entirety and the legislature having, before the abutting land had been sold by the state, declared that this lake should be treated as land and surveyed and sold as such, the subsequent grant by the state of the lots and fractional parts of sections adjacent to this lake would not carry any part of the water covered area which the state had thus, by legislative enactment, expressly reserved.

We readily concede that either the United States or a state may reserve the beds of lakes or other bodies of water and this may be done either in the patents granting the abutting lands, or by legislation previous to the con-

veyance to private owners of the abutting lands; so that, if the State of Arkansas, after becoming the riparian proprietor of the lands around St. Francis lake, and while the state yet owned these lands together with the lake itself, had, by an act of the legislature, declared that the lake should be treated as land and as such reserved for future survey and sale, as was done in Louisiana, then this reservation would have been impliedly written into every grant of the abutting lands thereafter made by the state, and the grantees of such lands could not have acquired any interest in the lake or the bed of the lake, and could have acquired no riparian rights in connection therewith. But there never was any such reservation on the part of the State of Arkansas, either by legislative act or otherwise. The state must, therefore, be held to have parted with all of its interest in the lake bed when it patented the land bordering thereon, and its grantees must be held to have succeeded to all the riparian rights of the state. For "if the state (of Indiana) got a title, it gave one" to the lake bed when it conveyed the surrounding land, as was said by Mr. Justice Holmes in *Kean* v. *Calumet Canal & I. Co.*, 190 U. S., 452; loc. cit., 461; Vol. 47, Law Ed., p. 1134, loc. cit., 1137, reaffirming the decision of the court in *Hardin* v. *Jordan*, 140 U. S., 371; Law Ed., Vol. 35, p. 428.

XI.

In the case of non-navigable waters, a deed which describes land as bounded by the water conveys *prima facie* as far as the grantor owns. This rule applies to a grant from the Crown, a state or the United States, and applies as well to navigable as un-navigable fresh streams, where the soil of navigable fresh rivers is held to be private property. This is true in all grants in which no distinct reservation is made; and although both the United

States and the State of Arkansas might have made reservation in their patents, neither of them did so in fact.

Towell v. *Etter,* 69 Ark., 34;
Crill v. *Hudson,* 71 Ark., 390;
Gould on Waters (Ed. 1900), Secs. 195, 196, pp. 377-379, and cases cited;
Freeman et al., v. *Bellegarde,* 108 Calif., p. 179;
Hardin v. *Jordan,* 140 U. S., 371; L. Ed., Vol. 35, p. 436, loc. cit.

In *Hardin* v. *Jordan, supra,* Mr. Justice Bradley says:

"When land is bounded by a lake or pond, the water, equally as in the case of a river, is appurtenant to it; it constitutes one of the advantages of the situation and a material part of its value, and enters largely into the consideration for acquiring it. Hence the presumption is that a grant of land thus bounded is intended to include the contiguous land covered by water. Besides a lake or pond, like a river, is a concrete object, a unit, and when named as a boundary the natural inference is that the middle line of it is intended—that is, the line equidistant from the land on either side."

XII.

"Where a water line is the boundary of a named lot, that line remains the boundary, no matter how it shifts; and a deed describing the lot by number or name conveys the land up to that shifting line, exactly as it does upon the shifting side lines."

Towell v. *Etter,* 71 Ark., 34, p. 39, loc. cit.
Jeffries v. *East Omaha Land Co.,* 134 U. S., 178; L. Ed., Vol. 33, p. 872.

Therefore, the sale of "the northeast fractional quarter of Section 18, Township 8 South, Range 3 West, 10.88 acres," for delinquent taxes, was held to convey an accretion of 148.91 acres.

Crill v. *Hudson,* 71 Ark., 390.

XIII.

The defendants in error contend that the region in controversy was land, not water, at the time of the Swamp Land Grant. If this contention were true, the *locus in quo*, under all the cases that can be cited by defendants in error, belongs to the United States. The United States has, however, refused to make any survey thereof, and has disclaimed all rights in favor of riparian owners of fractional meandered sections. Therefore, on their own showing, as between the parties to this suit, plaintiff in error has title to the *locus in quo*.

Grand Rapids & Indiana R. Co. v. *Butler,* 159 U. S., 87; 40 L. Ed., 85.

Whitaker v. *McBride,* 197 U. S., 510; 49 L. Ed., 859.

In this, the most recent case involving the questions here discussed, the law as stated in the great leading case of *Hardin* v. *Jordan* is reaffirmed; and Mr. Justice Brewer, in delivering the opinion of the court, says in closing:

"Our conclusion, therefore, is that by the law of Nebraska, as interpreted by its highest court, the riparian proprietors are the owners of the bed of a stream to the center of the channel; that the government, as original proprietor, has the right to survey and sell any lands, including islands in a river or other body of water; that if it omits to survey an island in a stream, *and refuses, when its attention is called to the matter, to make a survey thereof,* no citizen can overrule the action of the Department, assume that the island ought to have been surveyed, and proceed to occupy it for the purposes of homestead or pre-emption entry. *In such a case the rights of riparian proprietors are to be preferred to the claims of the settler.*"

ARGUMENT.

1.

It is too self-evident to need argument that the Land Department of the United States is the highest authority on all questions as to what facts are indicated by certain lines, notations and other marks appearing on its plats and surveys, made under its directions, rules and regulations.

2.

The Land Department of the United States, after hearing and on application for ruling by the St. Francis Levee Board, has decided that "when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain; and beds of inland non-navigable meandered lakes, or lands uncovered by the recession of the waters of such lakes, from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States, *but to the riparian owners.*" Hence, the State of Arkansas took the fractional sections meandered by the plats and field notes on this water, with the water-covered land as an *appurtenance;* and when the state, in turn, patented such fractional sections to plaintiff's grantor, Beach, the appurtenance passed from the state to Beach exactly as it had passed from the United States to the state, not as swamp lands, but as an apputenant water right in favor of a riparian grantee.

3.

This lake, being a lake off the St. Francis river at this point, clearly the riparian grantees claiming under a United States patent, plat and field notes meandered along the sinuosities of this lake or bay, go to the St. Francis river main channel. the lake itself being entirely un navigable.

4.

Plaintiff in error and defendants in error claim under a common source of title—the State of Arkansas.

Plaintiff in error claims under a patent from the state, the unsurveyed, then water-covered land, up to the channel of the St. Francis river on the west passing as an *appurtenance* under the very language of the patent.

Defendants in error as "straw grantee" (the real grantee being James Anthony, who "found" these lands for the Levee Board, and contracted to furnish evidence to swear case against timber cutters on the lands through) has no title whatever, merely claiming under act of 1893 (passed years after the state had patented these lands to Beach, with their *appurtenances*) and merely giving, in general terms, land in St. Francis Levee District to Levee Board without description of specific lands.

5.

Call this water (held a "permanent body of water" by the U. S. Land Department), "a lake," "sunk land," or "the scatters," if you like, still it constituted a well-defined boundary in these patents, both from the United States and the State of Arkansas; the water was the real boundary, and the east bank or thread of the main channel of the St. Francis river flowing through the lake, is the true limit of the grant.

6.

"In case of non-tidal waters, a deed which describes the land as bounded by the water conveys *prima facie* as far as the grantor owns.

"This rule applies to a grant from the Crown, a state or the United States." Hence, swamp land patent passed all the state owned as riparian owner under U. S. patent, to its grantee, Beach. The State of Arkansas is estopped by its own grant.

7.

Ordinary fair dealing requires that the courts should protect a riparian owner who has purchased in good faith, relying upon United States patent, plat and field notes, and state patent made on such survey and plat, against claim of the real defendant, James Anthony, who found these lands and persuaded the Levee Board that they might claim them, and bought them from the Levee Board at 50 cents per acre, in Bodkin's name, and has had them deeded along from one apparent purchaser to another, who surveyed them at his own expense, and who has undertaken to furnish evidence to show that the Levee Board owned them.

8.

The common law prevails in Arkansas as to riparian ownership, and under it plaintiff in error's title by United States and state patents carries, as an appurtenance or incident to the main grant, the bed of this lake up to at least the east bank of the St. Francis river, and said river is definitely located by the complaint and answer in this case and the plat of the Anthony survey, filed in Poinsett county.

9.

Plaintiff in error bought these fractional sections, *meandered on the water*, and equity demands that they should be protected in their water rights as riparian owners, which passed to them as a most *important* appurtenance or incident right under the very terms of the patents through which their title is derived.

10.

Owning the bed of this lake to the east bank of the St. Francis river, which now is located so as to divide this lake north and south, of course the evident and

equitable line of division is such river, because it is to the river that we should equitably go as riparian owners on this water; the fractional sections on the west side going to the west bank of the river, and we, as riparian owners, to the east bank. If we should ever claim anything inside the bed of the St. Francis river it would have to be by accretions, but to the channel as located by appellees themselves we go as riparian owners from meanders around this *non-navigable* lake or bay through which this river runs.

Harrison v. *Fite,* 148 Fed. Rep., p. 781; Oct., 1906, U. S. Circuit Court of Appeals.

In the case of *Harrison* v. *Fite, supra,* the bed of Big Lake in Mississippi County, Arkansas, constituted the *locus in quo.* Big Lake lies about fifteen miles northeast of the lands in controversy in the case at bar. In many ways there is much similarity between the basin of Big Lake and that of the lake which is involved in this case, particularly with reference to the rivers, the channels of which run through each of these lakes. As stated by the court in that case, "Little river has a well *defined* bed, largely free from vegetation and obstruction, running along the western margin of Big Lake basin." In like manner the St. Francis river, about the location of which there is no controversy in this case, runs from north to south through the western part of the lake basin and its channel or bed is conceded by both parties to be definitely located on the Anthony plat. The court in *Harrison* v. *Fite* found that Little river was not navigable and that the owners of the surveyed lands abutting on the government meander line around Big Lake owned by virtue of their riparian rights to the middle thread of Little river, that being the dividing line between the land on the east and that on the west of Big Lake. In the case at bar riparian owners on the east and west sides of

the lake own to the banks on the east and west sides of the St. Francis river if it is a navigable stream, or to the middle thread thereof if it is non-navigable. Hence, the plaintiff in error owns the entire *locus in quo* lying east of the east bank of the St. Francis river as that river is located on the Anthony plat.

11.

It is the duty and privilege of this court to examine public reports, plats, field notes and other documents in the United States Land Office, relating to the swamp land grants to the State of Arkansas, and this practice has the sanction of the United States courts.

See Judge Caldwell's opinion in *Kirby* v. *Lewis*, 39 Fed., p. 66; loc. cit., p. 77.

Also *Knight* v. *United Land Co.*, 142 U. S., p. 161; L. Ed., Vol. 35, p. 974.

12.

Plaintiff in error and defendants in error claim under a common source of title, the State of Arkansas. Plaintiff in error contends that unsurveyed land in controversy did *not* pass to State of Arkansas *under* Swamp Land Grant, because never selected, approved or patented, but *did* pass as an appurtenance to such patent, under surveys, plats and field notes, and under the decision of the Secretary of the Interior that it was at date of grant a *permanent body* of water, upon which plaintiff in error's patented fractional sections were properly meandered.

This difference between plaintiff in error and defendant in error is a *vital* one, *because,* if it passed to the state as such appurtenance in favor of state as *then* riparian owner of the surveyed fractional sections *then* owned by the state, such unsurveyed lands, of course, passed on to plaintiff in error under state patent and subsequent *mesne* conveyances.

13.

The unsurveyed land in controversy, being at the date of Swamp Land Grant the bottom of a permanent body of water, passed to the State of Arkansas as a riparian owner, and even if the lake had receded and partly dried up in 1871, when state made patent to Beach, such accretions passed even though formed between 1856-8, date of United States patents, and 1871, date of state patent, under the decision of the Supreme Court of Arkansas in *Towell* v. *Etter,* 69 Ark., p. 34, and also *Crill* v. *Hudson,* 71 Ark., p. 390, to say nothing of the presumption that grantor, in absence of reservations, conveys all he owns.

According to our view of this case, the ownership of the bed of this non-navigable lake by the owners of the land abutting thereon dispenses with all questions of accretion or reliction. The law of accretions and reliction has little or no application to the right of riparian ownership of lands meandered on non-navigable waters, as riparian proprietors own the bottom, wet or dry. By all the evidence that we have, or can have, there existed at the time of the Swamp Land Grant this body of water on which the fractional sections in Township 12, in Ranges 6 and 7 abutted, which body of water had all the characteristics of a permanent non-navigable lake, and was so treated in the official surveys made at that time. As, under the common law of riparian ownership, which is in force in Arkansas, the abutting land owners had the title to the bottom of this lake, and this title has passed with every successive grant of the abutting land, it is of little importance to inquire in this case whether or not dry land now exists where formerly there was water, or how such dry land was formed, if it does so exist. For this reason we have not undertaken to abstract the testimony of the witnesses, Peters, Davis, Varner, Biggs and Odom,

which relates to the present condition of *locus in quo* with reference to the character of the land and water within its limits. There is evidence, however, in this testimony to show that this lake has been gradually filling up, and this fact is distinctly admitted in the correspondence of the St. Francis Levee Board, through its chief engineer, with the Land Department. (See opinion and finding of Secretary of Interior at middle of page 112, transcript.) In his letter to the Secretary of the Interior of June 25, 1894, the chief engineer of the St. Francis Levee District said:

"The numerous overflows since then have filled up these lakes and swamps very much and changed largely the general features of the country. To such an extent has this filling up been done that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water."

This court will take judicial cognizance of the way in which these lakes in Arkansas fill up and dry up, that is, gradually and imperceptibly, and no evidence is procurable that would carry us back to 1850. As stated by Judge Caldwell in *Kirby* v. *Lewis*, already cited, the difficulty of finding living witnesses as to conditions in 1850 was recognized by the legislature of Arkansas twenty years ago, in the act of March 17, 1885, the preamble of which contains the language already quoted, viz.: "Whereas, more than thirty-four years have now elapsed since such date (28th September, 1850,) and but few persons are now alive who can testify to the character of such land as it appeared on the 28th day of September, 1850."

Also article of Thomas M. Cooley, 13 Central Law Journal, p. 1; and Comments and Discussion thereon, 32 Central Law Journal, p. 291.

14.

An examination of both the patent for 12-6 and 12-7 will show that the words "Township 12 North, Range 6 East" are used as a caption or statement of the township and range containing the lands thereafter to be specifically described. This was evidently a form used and in most cases the caption would be followed by description of sections and fractional sections, but in this case, the conveyance not being by sections, the description is exactly as follows:

"Township 12 North, Range 6 East."

"The whole of fractional township, containing seven thousand two hundred and thirty-six acres, and seventy-eight hundredths of an acre, *according to the Official Plats of Survey of the said land returned to the General Land Office, by the Surveyor General.*"

The United States expressly conveyed only a fractional township made fractional by certain meander lines, which defendants in error contend were run as boundaries for the purpose of limiting the grant. How then, can they consistently claim any land beyond these boundaries?

In the case of Township 12 North, Range 7, the patent to the state described the land as follows:

"Township 12 North, Range 7 East."

"The whole of the Township except section Sixteen; containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre, *according to the Official plats of survey of the said lands returned to the General Land Office by the Surveyor General.*"

Section sixteen was a surveyed fractional section; in Township 12-6 there was no Section sixteen, hence on exception.

The meander line along the west side of fractional sections 6, 7, 18 and 19, Township 12 N., Range 7 East, as shown on the township plat, is the western limit or

boundary of the surveyed and platted township. It is the only line shown on the plat as the west boundary and all outside of that boundary must be outside of the township. The appellees, therefore, gain nothing by claiming that the whole township was patented to the state by the United States, especially while contending that the meander line is a boundary: for nothing west of this exterior boundary could pass to the state *as a part of the surveyed township*. But this did not prevent riparian rights, extending beyond the township, from passing with the land granted within the surveyed township. In other words, the meander line in this instance is the west boundary of the surveyed and platted township, because no other western limit is given on the plat. Yet this meander line was not the boundary *of the grant*, which, by reason of its riparian character, extended beyond the surveyed township, just as the conveyance of a fractional section or fractional part of a section will, in like manner, where the land is of a riparian character, carry also the land beyond the meander line. *Towell* v. *Etter*, 69 Ark., 34; *Crill* v. *Hudson*, 71 Ark., 390. So far as concerned, *the grant itself*, the meander line was intended not as a boundary, but merely for the purpose of showing the sinuosity of the water.

The defendants in error in seeking to hem in *the grant* behind the meander lines by declaring in their answer that they were run as boundaries, evidently had in mind the case of *Horne* v. *Smith*, where there was no question of the riparian ownership of a lake or river bed.

The case at bar is easily distinguished as before shown from *Horne* v. *Smith*. But if the facts were such as to make the ruling in *Horne* v. *Smith* applicable, this in itself would leave the defendants in error strangers to the title, a result, which as before stated, they appear to have overlooked in contending that the meander lines

were the boundaries of the grant. If they bounded the grant from the state they must also have bounded the grant from the United States to the state. The Secretary of the Interior, however, has officially found upon full investigation, such a state of facts in connection with the *locus in quo* as to make the rule declared in *Hardin* v. *Jordan* applicable, leaving the title in the riparian owner. Neither the defendants in error, nor any one under whom they profess to claim, were necessary parties to any proceeding in the Land Department wherein this finding was made, if for no other reason than that by their own showing they can have no title to or interest in the land in controversy. The matter affected only the United States and the right of the riparian owner and was settled in favor of the latter on a question of fact arising within the jurisdiction of the Secretary of the Interior and in his department, as bearing on and regulating his official action, of which question of fact he was the final arbiter. There is no one who has the right to question this action of the Land Department, and this is especially true as to one who advances claims and bases them on contentions which, if correct, would in themselves debar him from any right or title to the land in controversy; and this statement, as applied to the claims of the defendants in error, gathers additional force when we consider the equities of the case, in view of the fact that at the time the plaintiff in error purchased these lands, in 1899, the St. Francis Levee District was on record in the Land Department as not claiming them, and the Land Department, on an application by the St. Francis Levee District to have the lands donated by the general government to the state or to the Levee District, had officially held the title to be in the riparian owner, and all the acts of the United States, the state and the St. Francis Levee District had conceded the riparian character of these lands and confirmed the ownership thereof in the riparian

owner. The idea that some profit was to be made by the pretense that these lands passed to the Levee District under the General Donation act of the state legislature in 1893, was first conceived and the lands "found" by the witness, Anthony, for speculative purposes, after the plaintiff in error had bought, in good faith, the abutting lands, and is the basis of the claim now made by the defendants in error. The rights of the riparian owner are certainly to be preferred to such a claimant. The language of this court on *Whitaker* v *McBride,* already quoted, seems particularly applicable to such a case, viz.: "That if it (the government) omits to survey an island in a stream, and refuses when its attention is called to the matter to make a survey thereof, no citizen can overrule the action of the department, assume that the island ought to have been surveyed and proceed to occupy it for purposes of homestead or pre-emption entry. *In such a case the rights of riparian proprietors are to be preferred to the claims of the settler,"* and it might be added that such rights are to be preferred to the claims of the speculator. The basis of the title of the plaintiff in error to the land in controversy, as before stated, is, however, not that the state never acquired the title thereto as would appear from defendants in error's own contention, but as determined by the Secretary under the facts found by him, that the state did acquire them by the law of riparian rights, with the lands abutting on the lake which, when they belonged to the United States, covered the *locus in quo,* and that by the same law the state conveyed the lands in controversy, whether then water covered or not when it conveyed without reservation the abutting lands to the parties under whom the plaintiff in error claims.

IN CONCLUSION.

We have not attempted to cite in this brief the numberless cases from the Supreme Court of the United States and the Supreme Courts of the various states on the questions involved in this case. Plaintiff in error, as owners under the United States and state patents of fractional sections meandered on this unsurveyed region, which was water at the time of the Swamp Land Grant, and which surround the *locus in quo* on the north, east and south, claim that their grant takes them to the channel of the St. Francis river as located on the Anthony plat, under the decision of the Secretary of the Interior, November 17, 1902, recognized as final by the Supreme Court of Arkansas in the recent case of *Williamson* v. *Baugh*, 71 Ark., 491; 76 S. W. Rep., 423; and under the authority of the case of *Hardin* v. *Jordan*, cited above, immediately followed by the case of *Mitchell* v. *Smale*, also cited above, and consistently followed by a large number of decisions of the Supreme Court of the United States, down to Mr. Justice Brewer's opinion, rendered April 10, 1905, in the case of *Whitaker* v. *McBride*, also cited above. Cases which will be relied upon *contra*, and of which *Horne* v. *Smith*, cited above, is the leading example, although easily distinguished, even if followed by this court, would result in finding that the United Statets still holds title to the *locus in quo*. As between the parties to this controversy, which is a suit in equity, all of the equities are in favor of plaintiff in error, who purchased the surveyed and patented fractional sections, meandered on the region of water at the time of the Swamp Land Grant, in reliance upon its riparian rights at common law, which is the law of Arkansas, so far as the Supreme Court has passed upon that question, to go to the St. Francis river, whose channel is definitely located by the Anthony survey, for the purposes of this case.

Defendants in error, without any equities, and chargeable with laches since 1893, when the St. Francis Levee Board under whom they claim was organized, and after having sought and failed to induce the United States to survey and patent this land to third parties, in order that it might be put upon the tax books, were, at the eleventh hour, induced by Anthony to claim it themselves, and to deed their claims to that enterprising engineer through the "straw" grantee Bodkin at 50 cents per acre. On no theory of this case can the *locus in quo* belong to defendants in error. On the strength of the facts and authorities hereinbefore cited, it belongs to plaintiff in error; and even on admissions in pleadings, position of defendants in error's counsel, and authorities relied upon by him, it would still be the property of the United States, which has already disclaimed title in favor of the riparian owners.

We cannot refrain from quoting in closing, the language of Mr. Justice Bradley in *Mitchel* v. *Smale, supra*:

"Our general views with regard to the effect of patents granted for lands around the margin of a non-navigable lake, and shown by the plat referred to therein to bind on the lake, were expressed in the preceding case of *Hardin* v. *Jordan,* and need not be repeated here. We think it a great hardship, and one not to be endured, for the government officers to make new surveys and grants of the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often *the* most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land

are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

We submit that upon the official surveys and records, not only unimpeached by any competent testimony, but also officially and finally confirmed in plaintiff in error's favor by the Secretary of the Interior, and upon the law as repeatedly declared by this court, the decision of the Supreme Court of Arkansas should be reversed by this court and a decree ordered by it to be entered in accordance with the prayer of the complaint of the plaintiff in error.

Respectfully submitted,

HENRY D. ASHLEY,
WILLIAM S. GILBERT,
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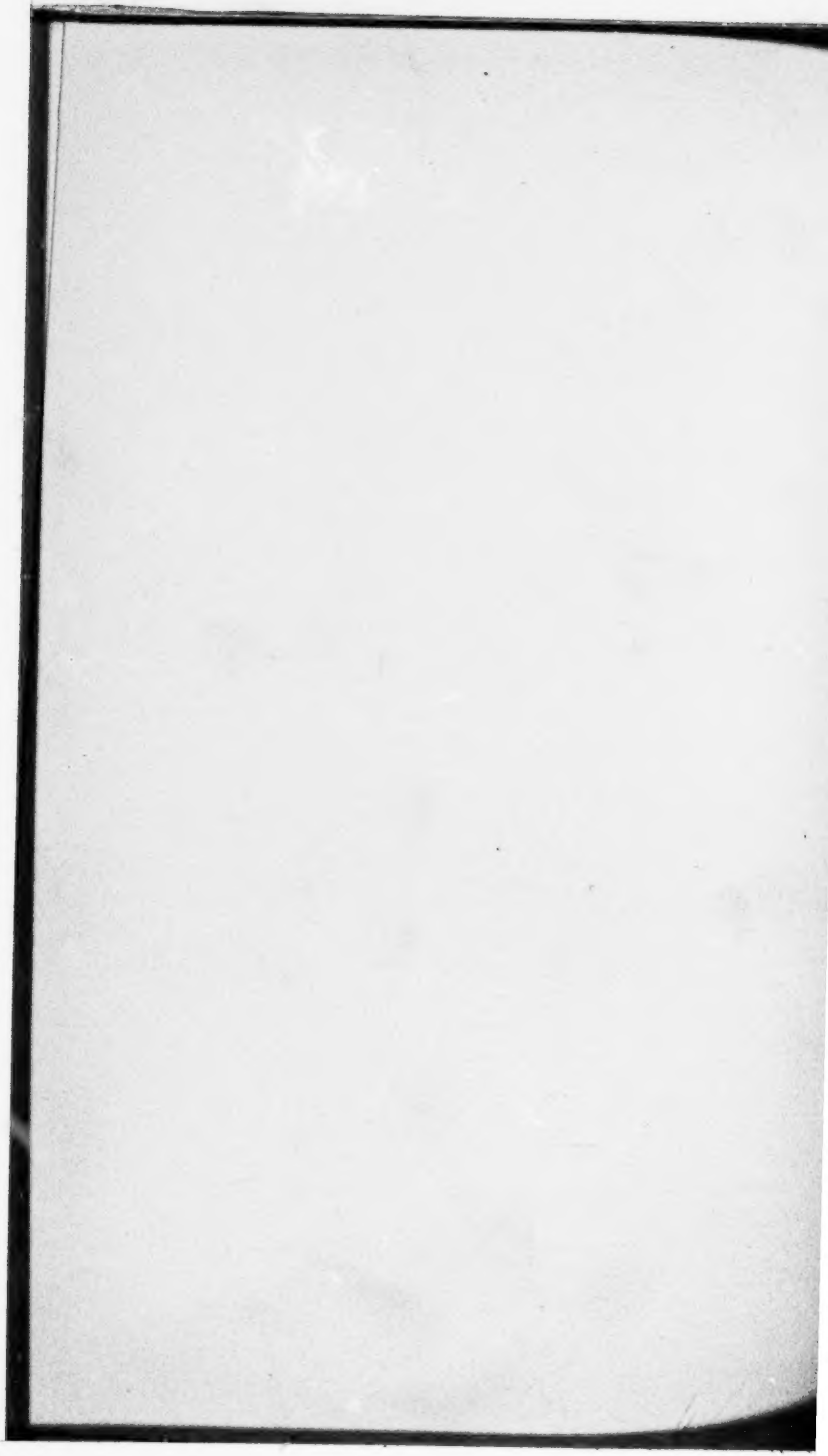
Sanford B. Ladd.



DONATING ACT.

ACT C.

AN ACT to donate to the St. Francis Levee District all the lands of this State within the limits of said Levee District, and for other purposes.

PREAMBLE

Recites certain things.

SECTION

1. Levee Directors may divide State lands in said territory into three grades, and sell same at stipulated prices for benefit of district.
2. Lands exempt from taxation for five years.
3. Levee District may confirm tax sales, provided a bond be executed to the Governor. Must report to Governor.
4. Act in force from passage.

Be it enacted by the General Assembly of the State of Arkansas:

That, for the purpose of assisting the citizens of the State to build and maintain a levee along the St. Francis front in this State, and in consideration of the general good of the State; that all the lands of this State lying within said Levee District, except the 16th section school lands, and all the right or interest the State has or may have within the next five years, by reason of forfeiture for taxes, or to any lands within said Levee District, except said 16th section school lands, is hereby conveyed to said Levee District, under the following restrictions and limitations:

SECTION 1. Said Levee District, represented by its Board of Directors, shall make a descriptive map of said lands, showing the location and character of same. That lands shall be graded into first, second and third grades, with reference to their relative elevation and timber, and a description of the land and timber given. The said Levee District may sell said lands for the minimum prices of $2.50, $1.50 and 50 cents per acre, as to grade, or may issue the bonds of said Levee District, secured by a mortgage on said lands or any part thereof, and payable as the Board of Directors may determine, and the Treasurer of the Levee

Board of said district, upon the receipt of payment of any part or parcel of said lands, shall certify the same to the President of said Board, who shall execute a deed in the name of said corporation to the purchaser of said lands, the money arising from such sales or issuance of bonds to be applied solely to the construction and maintainance (maintenance) of the levee of said Levee District.

SEC. 2. That said lands shall be exempt from State and county taxes for five years, if not sooner sold by said district, and at the expiration of the term of five years from the passage of this act all of the said lands not previously sold by said district shall be assessed in the name of said district for said State and county taxes.

SEC. 3. That the Levee District shall have the same power to confirm the tax sales to lands in said district in a court of equity that is now conferred upon individuals who purchase lands at tax sales, and the proceeding shall be the same as is provided by law for individuals, providing that the President of said Levee Board shall make a bond to the Governor, payable to the State of Arkansas, in the sum of $50,000, conditioned upon the faithful and honest appropriation of the proceeds of the aforesaid lands to the building and maintaining the levee of said district. That the President of said Levee Board shall, on the second Tuesday in May of each year, make a report to the Governor of this State, showing the lands confirmed to said Levee District by courts of chancery, as provided for in this act, and all other lands hereby conveyed, showing the disposition, if any, made of these lands during the preceding year, the funds realized, and where and how expended.

SEC. 4. That this act be in force and take effect from and after its passage.

"This bill having remained with the Governor five days (Sunday excepted), and the General Assembly being in session, it has become a law, this 29th day of March, 1893."

H. B. ARMISTEAD,
Secretary of State.

By E. B. JETT, Deputy.

FILE COPY.

JAMES H. McK

—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1906.

CHAPMAN & DEWEY LAND COMPANY,
Plaintiff in Error,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW, L. T. WALKER AND F. H. HARTSHORN,
Defendants in Error.

No. 262.

In Error to the Supreme Court of the State of Arkansas.

Reply Brief for Plaintiff in Error.

HENRY D. ASHLEY,
WILLIAM S. GILBERT,
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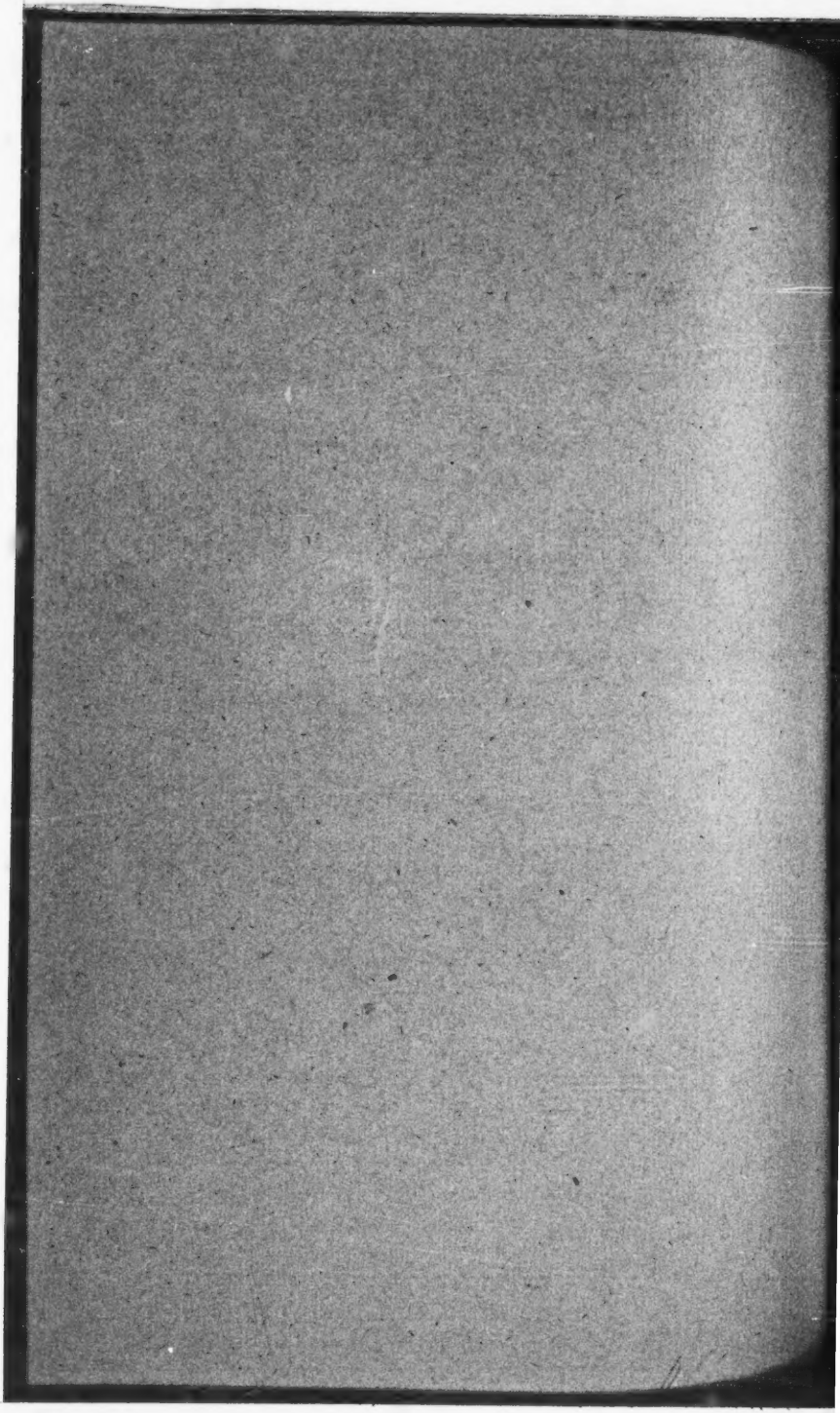
Counsel for Plaintiff in Error.



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Defendants in Error.

No. 262.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

The plaintiff in error, as the record fully shows, owns all of the surveyed land in both Township 12, Range 6, and Township 12, Range 7, bordering on the *locus in quo,* and east of the St. Francis river The surveyed land of the plaintiff in error adjoining the *locus in quo* on the east is in Township 12, Range 7. But for some reason, (presumably an inadvertence,) the ownership of this surveyed land by the plaintiff in error, on the east consisting of sections 6, 7, 18, 19 and 30 in Township 12, Range 7, and of its surveyed sections 35 and 36 on the southeast in Township 12, Range 6, does not appear marked on the plat of James Anthony,

which will be found on page 138 of the transcript and a copy of which will be found in the front part of the former brief of plaintiff in error.

The omission of the defendants in error to mention Township 12, Range 7, is especially significant when they are pressing their contentions to the ownership of the land in question upon their theory that the United States patents conveyed the whole townships to the State of Arkansas. Their reticence about said Township 12, Range 7, in this connection, one is forced to conclude arises from the fact that the external meander line on the west of this township leaves a large tract of land without the limits thereof, and excluded therefrom by their own contention that this meander line is a boundary line.

II.

Federal qestions cannot be eliminated.

The defendants in error in their first brief attempt to eliminate the Federal question from this case by departing from the real questions on which the case was tried and decided in the State courts. The Record shows what these questions were, and it is not now within the power of the defendants in error to escape from them by seeking to give the case a new aspect in this court.

For the purpose of sustaining their claims in the State courts, the defendants in error denied that any riparian rights ever accrued to plaintiff in error by virtue of its ownership of the surveyed lands abutting on the body of water shown on the plats of the surveys. Their contention in the State courts was that the region in question was not, at the time of the surveys, a body of water at all, but "a body of lands." (Transcript p. 77). Their answer to the complaint was a studied at-

tempt to show that this case belonged in the same class with *Horne* v. *Smith* and that therefore the rule of *Hardin* v. *Jordan* was inapplicable and the evidence offered by defendants in error and admitted over the objection of the plaintiff in error, was all for the purpose of sustaining the allegations so contained in their answer. The official field notes and plats of survey, selections by the state, approvals and patents by the United States, and findings of the Secretary of the Interior were all duly urged by plaintiff in error as opposed to the allegations contained in the answer of the defendants in error and as conclusive against the evidence offered by them; which evidence so offered by the defendants in error, was duly objected to by the plaintiff in error. The Federal questions thus clearly presented were decided by the State courts adversely to the plaintiff in error. All of which appears in the record.

In their first brief, defendants in error now treat the case as though they too were claiming title through the state under the rule of *Hardin* v. *Jordan* precisely as the plaintiff in error is claiming it, which, of course, necessarily concedes the riparian character of the lands. See pages 1 to 4 of the first brief of defendants in error. They say:

"Under the rule laid down in *Hardin* v. *Jordan* the title to the land under water in these townships passed incidentally, upon the issuance of these patents to the State of Arkansas."

"Both parties to this litigation claim under the State of Arkansas,—the patentee—and it follows that the existence of a Federal question is impossible." Page 2 of first brief of defendants in error. This is clearly an attempt to have it appear that both parties are claiming under the State of Arkansas the same riparian title derived by the state from the United States, a proposition now advanced for the first time by the defendants

in error and wholly incorrect in law and fact as clearly shown by the record.

Thus it appears that, in the hope of defeating the jurisdiction of this court, the defendants in error are willing to abandon here, the grounds on which they sought to defeat the title of the plaintiff in error in the State courts.

The grounds on which the contentions of either party were based in the State courts, as shown by the record, can not be shifted in this court for the purpose of either injecting into or eliminating from the case, a Federal question.

Iowa v. *Rood*, 187 U. S., 87, Loc. Cit., 92.

III.

Defendants in error argue on the merits.

After thus conceding to the plaintiff in error all that it contended for in the State court, for the manifest purpose of eliminating the Federal question and making the decision of the State court conclusive, defendants in error suddenly change front and enter upon a discussion of the case upon the merits under the heading:

WAS THE LAND AT THE TIME OF THE SURVEY PERMANENTLY SUBMERGED OR ONLY TEMPORARILY UNDER WATER? Page 4, First Brief.

This they say "is a question of fact" and continuing they say: "Furthermore, no matter how the question of fact is decided, still the State of Arkansas acquired the title. If submerged land at the time, the manner of acquisition has been shown; if not submerged it passed under the patent for the whole of fractional Township 12 North, Range 6 East."

That is to say, the defendants in error now contend that if the *locus in quo* was a lake it passed under the

rule of *Hardin* v. *Jordan* to the state as riparian owner "incidentally upon the issuance of these patents to the State of Arkansas,"—a proposition entirely fatal to the claims of the defendants in error. On the other hand they say, that if it was not a lake, but was unsurveyed land as distinguished from a body of water, as was contended by them in the State courts, then it passed to the state under the patent for the "whole fractional township" 12 North, Range 6 East,—a proposition wholly untenable as a matter of law.

(It will be noted that defendants in error here say nothing about Township 12 North, Range 7 East, which is equally involved in this case.)

The foregoing assertion of the defendants in error, on which they rely so greatly, viz; that the selection, approval and patent of a "fractional township" containing only 7236 78-100 acres of surveyed land can be construed to mean a full township over two-thirds of which remained unsurveyed, would in itself present a Federal question, even if there were no other in the case. It involves not only a construction of the selections, approvals and patents, but also of the Swamp Land Act itself and of the Act of Congress regulating surveys of public lands. The third section of the Swamp Land Act is as follows:

"In making out lists and plats of the lands aforesaid all *legal subdivisions*, the greater part whereof is wet and unfit for cultivation, shall be included in said lists and plats, but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."

What is meant by a "legal subdivision?"

The Act of Congress prescribing rules of survey (Revised Statutes, Sec. 2395) provides that:

"The townships shall be *subdivided* into sections, containing as nearly as may be, six hundred and forty

acres each, by running through the same, each way, parallel lines at the end of every two miles; and making a corner on each of said lines, at the end of every mile."

All there can be of a legal township must consist of these legal subdivisions, and these subdivisions must have been ascertained and laid off by a survey, before any selection, approval or patent can be made under the Swamp Land Act, for each legal subdivision must, under that act, be considered separately, in order to ascertain whether the greater part of it is "wet and unfit for cultivation." How then, could land (assuming for the purpose of argument, this to have been land) which had never been surveyed and therefore not divided into legal subdivisions, be legally selected, approved or patented? And, especially, how could a full township pass by a patent which purported to convey only a fractional township?

It is plain that if, at the time of the survey of the fractional township, the region now in question was land, as distinguished from water, it never was surveyed, and therefore never has been selected, approved or patented as such land.

Gazzam v. *Phillips,* 20 How., 372;
Horne v. *Smith,* 159 U. S., 40.

If on the other hand it was not land but, as shown by the official records of survey and as officially found by the Secretary of the Interior, was a permanent body of water then, as aptly stated by defendants in error in the passage already quoted from their brief, under the rule laid down in *Hardin* v. *Jordan,* the title to the land under water passed "incidentally upon the issuance of these patents to the State of Arkansas," and it follows, as we contend, that under the same unquestioned rule of conveyancing, as recognized by the local law of

Arkansas, upon the issuance of patents without reservation by the State of Arkansas, for the abutting surveyed lands, the title to the land under water passed "incidentally upon the issuance of these patents" from the State of Arkansas to the plaintiff in error by *mesne* conveyances.

It is clear that the plaintiff in error can not be deprived of its title by the contention that the *locus in quo* went to the state as an unsurveyed part of a full township, under a patent which, by its terms conveyed only a surveyed fractional township, according to the plat of the government survey which is part of the patent itself, and shows definitely the surveyed acreage as well as the configuration of the unsurveyed water on which the surveyed fractional sections are therein meandered.

Although in what has been said above, particular reference has been made to fractional Township 12, Range 6, the same remarks are equally applicable to Township 12, Range 7, which is also fractional as shown by the official plats of survey which are to be read into the patent.

Jeffries v. *East Omaha Land Co.*, 134 U. S.. 178, 33 L. Ed., 872.

Hence the patent of the whole of Township 12, Range 7, could convey *as land* only the surveyed part within the external surveyed lines of the platted township; but by virtue of the riparian rights incident to the grant of the abutting land, without reservation, the patent did convey the bed of the lake beyond the external line of the surveyed fractional township. See pages 103 to 106 of former brief of plaintiff in error.

The doctrine of quantity giving way to metes and bounds has no application, where the metes and bounds of surveyed areas shown on the plats of survey make up the exact quantity stated in the conveyance of which

the plats of survey were a part. The familiar rule of construing an instrument so as to harmonize all parts thereof confirms our contention that only the surveyed areas passed as land by the patents in question, the bed of the lake passing by riparian right incident thereto.

IV.

The fundamental question in this case is how did the title to the locus in quo pass from the United States to the State of Arkansas? The answer to this query determines the respective claims of these litigants.

It is true that on pages 97 and 100 of the former brief of plaintiff in error, the expression is used "Plaintiff in error and defendants in error claim under a common source of title, the State of Arkansas."

This is true only in the sense that both parties are claiming from the United States through the State of Arkansas titles essentially differing from each other. It is not true, as contended by the defendants in error, that both parties are claiming under the state as a common source of title in the sense that they are claiming the same title through the state.

This contention, by which it is sought to deprive this court of jurisdiction, is specious and can not bear an analysis. It is true that both parties seek to trace their respective titles through the State of Arkansas, but the plaintiff in error contends (and as the record shows, has so contended from the beginning of this suit in the State courts), that the title which passed from the United States was of a riparian character, and by reason of this character which it then had, it necessarily under the local law of Arkansas (about which local law no question is raised in this case), passed with the surveyed

abutting fractional sections from the State by *mesne* conveyances to the plaintiff in error and carried the bed of the lake.

While, on the other hand, the defendants in error contended in the State courts (and based their claim on that contention), that the state derived from the United States a title to the land in controversy entirely different in character from the kind of title which rests on riparian rights, and that by reason of this difference, it did not pass from the state to those under whom the plaintiff acquired the surveyed abutting fractional sections. It is plain that the plaintiff in error and the defendants in error are claiming two different things and that the questions which create this difference, arise at the point where the United States parted with the title and before the State of Arkansas got it.

This is not one of those cases where there is no dispute about the manner in which the title passed from the United States to the state and where everything in connection with that grant is admitted; the only question in such cases being, as to whether the title has passed from the state to one party or the other. Here the whole controversy turns on the manner and extent of the grant from the United States to the state, and the question of whether the land was of a riparian character at the time of the grant from the United States to the state, enters vitally into this controversy and is therefore, for the reasons which we have fully stated in our former brief, a Federal question, depending for its determination upon the records of the official acts of the authorized agents of the United States in the Land Department, including the findings of the Secretary of the Interior.

In *Miller* v. *Dale*, 92 U. S., 473, Mr. Justice Field says:

"In an action of ejectment, where both parties assert title to the premises—the plaintiff under a concession

of the former government, confirmed by the tribunals of the United States and an approved survey under an act of Congress, and the defendant under a patent of the United States issued upon a similar confirmed concession —the inquiry of the court must extend to the character of the original concessions to ascertain which of the two titles gave the better right to the premises; and if these do not furnish the means for settling the controversy, reference must be had to the proceedings before the tribunals and officers of the United States, by which the claims of the parties were determined."

All cases cited by defendants in error in support of the proposition that a common source of title in the state through which the litigants claim title is fatal to federal jurisdiction, are cases where no dispute has arisen as to how the state acquired its title. All are cases where the rival claims of the state's grantees are unaffected by the method by which the state acquired, or the character in which, it held the title, prior to its disposal thereof.

V.

Did the State of Arkansas acquire title to the land in controversy by virtue of riparian rights?

We understand defendants in error to say, on page 2 of their first brief, that the state did so acquire this land and therefore that the rule of *Hardin* v. *Jordan* is applicable. This, of course, concedes the existence of a permanent body of water. But as before stated, they say this now for the first time, and apparently by thus admitting the grounds on which plaintiff in error bases its claim, seek to defeat the jurisdiction of this court to review the judgment of the State court favorable to the defendants in error.

Then again, they say (for the first time in this case,) that if this lake was a body of water at the time of the

survey, "it became the property of the state *by reason of its sovereignty* regardless of the patents." Page 9 of additional brief of defendants in error.

It is unnecessary to comment on the inconsistency of two such contentions. But viewing this claim of title by sovereignty apart from the many other inconsistent claims of the defendants in error, it is enough to say, that the defendants in error have, in their pleadings and in all of their contentions in the State courts, professed to deraign their title from the United States under the Swamp Land Act, and never, at any time, impliedly or otherwise, alleged or claimed that the state acquired this land otherwise than as *swamp land*, selected, approved and patented to it under that act. Therefore the proposition, now suggested for the first time, that the state could have acquired this land by virtue of its *sovereignty*, is entirely irrelevant to this case. There was no such question presented or passed upon in the State courts.

VI.

Defendants in error without color of title from the United States.

The defendants in error in the State courts based their claims on the contention that the *locus in quo* was not a permanent body of water at the date of the survey.

If the Secretary of the Interior had found such to be a fact, yet, on no theory under any of the cases cited by defendants in error, could they claim such fact as a basis of title. On the other hand, if it was such a body of water, the title of the land now in controversy necessarily accrued to the plaintiff in error as riparian owner, upon the principles of conveyancing recognized by the local law of Arkansas and about which there never has been any question in this case. Hence the defendants in

error never had any interest in any proceeding in the Land Department for the determination of the character of the region in question. They are in the position of mere intruders and not necessary parties to such proceeding. They have not even a color of title from the United States.

Ehrhardt v. *Hogaboom*, 115 U. S., 67.

VII.

Incompetency of parol evidence to impeach official surveys.

While the character of the region in question has been legally and finally established by the official surveys made under the direction of the Land Department and the findings of the Secretary of the Interior, yet, as showing how wholly incompetent was the sort of parol evidence offered by the defendants for the purpose of impeaching those surveys we quote below the language of Mr. Justice Miller speaking for this court in *United States* v. *Maxwell Land Grant Co.*, 121 U. S., 325, where the correctness of certain official surveys had been questioned. He said:

"We take the general doctrine to be that when, in a court of equity, it is proposed to set aside, to annul or to correct a written instrument, for fraud or mistake in the execution of the instrument itself, the testimony on which it is done must be clear, unequivocal and convincing, and that it can not be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the government of the United States under its official seal. * * * It is not to be admitted that titles by which so much

property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and, as in this case, under the seal and signature of the President of the United States himself, should be dependent upon the hazard of successful resistance to the whim and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such attempt successful."

VIII.

Authorities incorrectly applied.

Defendants in error, on page 4 of their first brief say: "Where the boundaries of the patent do not in terms cover the adjacent submerged lands, they nevertheless belong to the state as incidental to its sovereignty," citing *Iowa* v. *Rood*, 187 U. S., 87. This case, upon examination, will be found to contain no such holding, for that court did not entertain or pass upon that question. Again, on page 7, of their first brief, they cite this same case as authority for the statement that "a decision of a state court adverse to a claim of title to a lake bed, presents no Federal question, which will sustain a writ of error from the Supreme Court of the United States."

In the case above mentioned (*Iowa* v. *Rood*,) the State of Iowa claimed in the State court the ownership of the bed of a lake by reason of *its sovereignty*, as against a claimant under the Swamp Land Grant. The Supreme Court of Iowa decided the case in favor of the swamp land claimant. The state sued out a writ of error from this court. This court held that there was no Federal question, because the ownership by states of the beds of waters by virtue of sovereignty was not based on any statute, or on the constitution of the United

States, but on the common law which antedated both. The court held, therefore, that no law of, or authority exercised under the United States was involved in the claim of the state; but the court concluded by saying: *"Had the decision of the Supreme Court been adverse to the plaintiffs, who claimed title under the Swamp Land Act, it is possible that a writ of error might have lain* from this court, but we have frequently held that to sustain such writ, the decision must be adverse to a right claimed under an act of Congress, or *to the exercise of an authority granted by the United States."*

In *Iowa* v. *Rood, supra,* there was no question as to the correctness of the official survey in showing the existence of the lake there involved. It was not disputed that the lake did exist as shown by that survey and there was no attempt to impeach the returns of the government surveyors or to construe or misconstrue those returns. Their survey showed the fact of the existence of the lake and their official acts in doing this (being clearly within their powers) were not drawn in question as in the case at bar. Hence this case can not be applied to the case at bar in the manner attempted by defendants in error on page 16 of their additional brief.

Defendants in error say: *"A contention about boundaries however, raises no Federal question."* Additional brief of defendants in error, page 8.

This, however, is a suit which involves the manner and extent of a grant from the United States. It is not a suit, (as in the cases cited in brief of defendants in error) in which two persons are claiming to own on one side or the other of a given boundary which must be ascertained and located on the surface of the ground by certain monuments and calls in the survey, and about the true location of which there is a dispute.

In the sense in which the defendants in error imply that this is a suit "about boundaries" every suit involving the title to land might be called a suit about boundaries. Here, there is no effort required to find any line run by the survey. Every line so run is known and ascertained and its precise location on the surface of the ground is in no way disputed. But on one side of certain of those lines the surveys show the existence of a permanent body of water, and the question of the manner in which the *locus in quo* beyond these lines passed under the patents from the United States is not a question of boundaries, but, as above stated, purely one affecting the manner and extent of the grant from the United States. All of which is respectfully submitted.

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SUPREME COURT U. S.

—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1906.

THE CHAPMAN & DEWEY LAND COMPANY,
Plaintiff in Error,
vs.
CHARLES H. BIGELOW, N. P. BIGELOW,
L. P. WALKER AND F. H. HARTSHORN,
Defendants in Error.

No. 262.

In Error to the Supreme Court of the State of Arkansas.

Petition for Rehearing.

HENRY D. ASHLEY,
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PETITION FOR REHEARING.

The said Chapman and Dewey Land Company, plaintiff in error, comes now and respectfully petitions this honorable court for a rehearing of said cause, which the court has dismissed on the ground of lack of jurisdiction, for the following reasons, to-wit:

I.

The controversy turns wholly upon the construction of the Government patents and surveys, which is necessarily a Federal question.

Because "AS THE PLAINTIFF IN ERROR CONTENDED, IN THIS COURT AND IN THE COURTS BELOW, THAT A PROPER CONSTRUCTION OF THE SURVEY AND PATENTS GAVE RIPARIAN RIGHTS COVERING THE LAND IN DISPUTE, AND THAT IT WAS NOT COMPETENT TO OVERCOME SUCH RIGHTS BY (*the incompetent*) EVIDENCE (*received below over plaintiff in error's objection as*) AFFECTING THE LEGAL IMPORT OF THE PLATS AND PATENTS, WE THINK A FEDERAL QUESTION IS THUS PRESENTED."

The *foregoing is the exact language of this court* in its unanimous opinion in *French-Glenn Live Stock Company* v. *Springer*, 185 U. S., 47, l. c., 54, excepting only the words in brackets, which we have added to show our further point entitling us to a rehearing, viz:

II.

The competency and legal effect of the evidence as bearing upon a question of Federal law is directly involved.

Because "WHEN THE QUESTION DECIDED BY THE STATE COURT IS NOT MERELY OF THE WEIGHT OR SUFFICIENCY OF THE EVIDENCE TO PROVE A FACT, BUT OF THE COMPETENCY AND LEGAL EFFECT OF THE EVIDENCE AS BEARING UPON A QUESTION OF FEDERAL LAW, THE DECISION MAY BE REVIEWED AS A SUPREME COURT OF RECORD MAY REVIEW THE PROCEEDINGS OF INFERIOR COURTS OF ORIGINAL JURISDICTION."

The above is the language of this court in *Mackay* v. *Dillon*, 4 How., 447, approved in *Dower* v. *Richards*,

151 U. S., 658, and quoted as the present rule by Mr. Hannis Taylor, an authority of international reputation, in his recent work on *Jurisdiction and Procedure of U. S. Supreme Court.* (P., 394.)

III.

The issues bring the controversy squarely within the foregoing declarations of law by this court.

Because plaintiff in error has claimed throughout the case that the *locus in quo is shown by the Government patents, surveys and field notes as water,* bordering upon the meander lines of its lands acquired by *mesne* conveyances under the Federal patents of which such plats and surveys are a part, and that the *locus in quo* therefore accrued to it by the riparian rights given by the admitted local law.

And the *defendants in error admit in their answer* (Tr., 77, 11th line from bottom of page), *that "at the time of the survey the meandered lines were run around this body of sunk and overflowed lands as if it had been a body of water,"* but claimed the field notes to show such water to have been land, whereby they contend the *locus in quo* passed by the township patents as swamp land to the State and to them as grantees of the St. Francis Levee District, the State's donee of undisposed-of land. The acreage recited as conveyed by the township patents is exactly that of the marginal surveyed lands of the townships.

IF THIS CONTENTION BETWEEN THE PARTIES AS TO WHETHER PART OF THE TOWNSHIPS PASSED UNDER THE FEDERAL PATENTS, SURVEYS, PLATS AND FIELD NOTES AS WATER OR AS SWAMP LAND BE NOT A FEDERAL QUESTION, THEN THE CONSTRUCTION AND EFFECT OF FEDERAL

PATENTS AND SURVEYS NEVER IS ONE, AND THE COURT OUGHT TO SAY SO EXPRESSLY, IF IT MEANS TO OVERRULE FRENCH-GLENN LIVE STOCK COMPANY V. SPRINGER, 187 U. S., 47, WHERE IT DECLARED EXACTLY THE CONTRARY IN ACCORDANCE WITH THE LAW GIVING IT JURISDICTION OF RIGHTS CLAIMED UNDER AN AUTHORITY EXERCISED UNDER THE UNITED STATES, WHEN THE DECISION OF THE STATE COURT IS AGAINST SUCH RIGHT CLAIMED.

IV.

Because the findings of the State Court contrary to the Government plats of survey were utterly unsupported by any competent or contemporaneous evidence, hence this court cannot be concluded thereby.

ALTHOUGH THIS COURT MAY NOT REVIEW CONFLICTING TESTIMONY EVEN IN EQUITY CASES ON WRIT OF ERROR TO STATE COURTS, WE SUBMIT IT CAN NOT PROPERLY ABDICATE ITS JURISDICTION OF SUCH CASES, WHERE THE ACTS OF FEDERAL OFFICERS ARE INVOLVED, BY ACCEPTING WITHOUT QUESTION THE FINDINGS OF THE COURT BELOW, WHEN THE CLAIM IS MADE THAT THERE WAS NO COMPETENT EVIDENCE ADDUCED TO SUPPORT SUCH FINDINGS AS IN THE CASE AT BAR.

IN SUCH CASES THIS COURT MUST AT LEAST EXAMINE THE RECORD IN ORDER TO DETERMINE WHETHER THERE IS ANY COMPETENT EVIDENCE TO SUPPORT SUCH FINDING, OR CONSIDER THE OBJECTIONS MADE TO SUCH EVIDENCE BEARING ON A FEDERAL QUESTION, IN ORDER TO HAVE ANY EFFECTIVE JURISDICTION IN SUCH CASES, OTHERWISE IT WOULD REST IN THE POWER OF THE STATE COURTS BY AN UNWARRANTED STATEMENT OR FINDING TO DEPRIVE THE LITIGANT OF A FEDERAL RIGHT OR PRIV-

ILEGE GIVEN BY LAW. See authorities under point II herein.

The opinion of the Supreme Court of Arkansas itself shows the Federal surveys to have been made in 1849, and prior thereto, and attempts to construe a field note against plaintiff in error's claims, which in itself furnished a Federal question.

The opinion then quotes the testimony of Anthony, *who had only known the land since* 1874, *twenty-five years and more after the original surveys, and who testifies mostly as to present conditions* (Tr., 130 and 131), as do all the other *witnesses, none* of whom *had known the place even casually earlier than the late eighties* (Tr., 86, 103, 118 and 126), except Varner, who though an old resident of the neighborhood, "ain't able to say how much it has filled up, as he hadn't paid any attention about that," and only knew that his canoe couldn't now go where it used to.

As to the incompetency of this testimony to support the finding that the elevation of the "sunk lands" has not changed since the running of the meander lines, see pages 79 to 81 and 87 to 89 of plaintiff in error's original brief, and we challenge examination of the few pages of the record, 86 to 110 and 117 to 137, containing the testimony, or abstract of same at pages 26, 55 and 56 in plaintiff in error's brief, *that this court may determine for itself whether it can afford to oust itself of jurisdiction to pass on Federal surveys by conclusions drawn from such remote and conjectural testimony in opposition to the Government plats.*

V.

Because the plats of survey of 1845 and 1849 showing these "sunk lands" of the New Madrid earthquake as a lake bordering on plaintiff in error's meander lines, are the only evidence in the case as to conditions in 1850, the date of Swamp Land Grant.

In *United States* v. *Low*, 16 Pet., 166, this court said: *"The official return of the surveyor general has accorded to it the force of a deposition.* So we held in the case of the *United States* v. *Breward*, 16 Pet., 147, and *United States* v. *Hanson*, 16 Pet., 196."

In *Whitaker* v. *McBride*, 197 U. S., 510, *concerning a riparian claim to an unsurveyed island*, Mr. Justice Brewer said, speaking for the whole court: *"The official surveys made by the Government are not open to collateral attack* in an action at law between private parties," citing *Stoneroad* v. *Id.*, 158 U. S., 240, and *Russell* v. *Maxwell Land Grant Co.*, 158 U. S., 253.

The Supreme Court of Arkansas has itself held *testimony as to conditions, nearly thirty years after, not proper proof of the quality of the lands at date of the Congressional grant*, saying in *Hendry* v. *Willis*, 33 Ark., 837: "From divers natural and artificial causes, the surface of the earth is continually changing, and *lands which were wet, overflowed and unfit for cultivation in* 1850 *may now be high and arable."*

EVEN IF THE PLATS OF SURVEY ARE NOT ABSOLUTELY CONCLUSIVE, THEY AT LEAST MAKE A *prima facie* CASE, WHICH CAN NOT BE LEGALLY AFFECTED BY TESTIMONY AS TO CONDITIONS 25 TO 50 YEARS AFTERWARDS, WHICH TAKING INTO ACCOUNT CHANGES WROUGHT BY TIME, IS NOT AT ALL INCONSISTENT WITH THE SURVEY'S CORRECTNESS.

This court said in *Hardin* v. *Jordan*, 140 U. S., 371, l. c., all of which fits the facts in the case at bar:

"Besides, the plat of the lake and the land surrounding it, referred to in the patent granted to Holbrook, exhibits the various fractional sections surrounding the lake as immediately bordering upon it; and this as shown by the authorities already cited, constitutes the lake itself, the real boundary of the land, without regard to the meander. THERE SHOULD BE SOME EXTRAORDINARY PROOF OF MISTAKE ON THE PART OF THE SURVEYOR IN ORDER TO INTERFERE WITH THE PASSING OF THE LAND AS RIPARIAN LAND."

The remarks of Judge Caldwell in *Kirby* v. *Lewis*, 39 Fed., 74, *which are almost literally applicable to the evidence in pais herein*, show how far it is from extraordinary proof, "waiving consideration of its competency."

"In 1850 that country was sparsely settled, and most of the lands were in their natural state. There was no special landmark on the tract to attract attention to it, or distinguish it from the vast domain of wild lands surrounding it. None of the witnesses resided on or near the land, or had any interest in it. Not one of them knew where the lines or corners were until 1883, when they were pointed out to them by the plaintiffs, preparatory to their becoming witnesses in this case. Their attention was never called to this tract, any more than to any other 40-acre tract of wild land in that region. Their knowledge of it was acquired chiefly, if not solely, by occasionally traveling along a country road which ran on or near its western boundary. From such imperfect *data* they express the opinion, 35 years afterwards, that not more than 10 or 12 acres of the 40 was then dry land, and that the balance was swampy and overflowed. The integrity and veracity of the witnesses is not questioned, but they never possessed sufficient, accurate, and exact knowledge of this land to enable them to testify persuasively on this subject. They had no interest in the land, did not know its boundaries, and never went upon it and examined it with a view of determining how much

of it was swamp and how much dry land, until more than a third of a century after the grant. Whatever knowledge they had of the condition of the land in 1850 was acquired in the most casual and perfunctory way. It may be said in this case, as was said by the Supreme Court of the United States in an analogous case:

"Those who could testify from actual knowledge are perhaps all dead. The population of that time has all passed away, and the memories of any who may be living must be very imperfect."

WE RESPECTFULLY SUBMIT THAT IF THIS COURT IS BOUND BY THE UNWARRANTED FINDINGS OF THE COURT BELOW BASED WHOLLY ON CONJECTURE, THEN IT IS SHORN OF ITS INDEPENDENT JURISDICTION, AND CAN ONLY REVIEW THE DECISIONS OF STATE COURTS UPON FEDERAL QUESTIONS, WHEN SUCH COURTS ARE WILLING TO PERMIT IT, A PREPOSTEROUS POSITION FOR AN APPELLATE COURT TO ALLOW ITSELF TO BE PLACED IN, AND ONE FURTHERMORE DEPRIVING CITIZENS OF THEIR LEGAL PRIVILEGE TO HAVE REVIEWED BY THIS COURT THEIR CLAIMS OF RIGHTS UNDER AN AUTHORITY EXERCISED UNDER THE UNITED STATES.

However, if the court means to overrule its declaration in *Mackay* v. *Dillon*, 4 How., 447, approved in *Dower* v. *Richards*, 151 U. S., 658, ought it not to say so expressly, so that the limitations of its jurisdiction may be known?

VI.

Because the writ of error is dismissed on authority of following cases, all distinguishable from the case at bar, or in which the court retained jurisdiction on writ of error to a state court.

1. *Moreland* v. *Page,* 20 Howard, 522.

This "is a mere question of boundaries between two neighbors, both admitted to have valid grants from the United States."

2. *Lanfear* v. *Hunley,* 4 Wallace, 204.

"The error, if any were committed, was in locating it (the grant) upon the land, and fixing its boundaries. In the performance of this function by that court, no treaty, act of Congress or authority exercised under the United States was drawn in question."

3. *Dower* v. *Richards,* 151 U. S., 658.

A case cited by plaintiff in error and which *inter alia* declares:

"When the question decided by the State Court is not merely of the weight of sufficiency of the evidence to prove a fact, but of the *competency and legal effect of the evidence* as bearing upon a question of Federal Law, the decision may be reviewed by this court."

4. *Egan* v. *Hart,* 165 U. S., 188.

This case decided that "if the questions of fact found and decided in the State Court are adequate to determine the controversy between the parties, and broad enough to maintain a judgment independent of any Federal question, this court is without jurisdiction, although the State Court may have also decided such a question."

How can the judgment of State Court be maintained in the case at bar without overturning the official government plats of Tp. 12-6 and Tp. 12-7?

The fact that counsel for defendant in error in an effort to eliminate Federal question concedes in this court at the eleventh hour the finality of government plats and that the case is controlled by *Hardin* v. *Jordan* cannot affect the clear jurisdiction of this court on writ of error.

5. *Israel* v. *Arthur,* 152 U. S., 355.

State court decided that wife, who eloped with paramour in life time of husband and was afterwards and before death of husband divorced by such husband, was estopped to attack validity of divorce decree and claim widow's rights in deceased husband's estate. Mr. Chief Justice Fuller in opinion says:

"To review that judgment would be to overhaul the application by a State court of principles of public policy and of estoppel, which it is not within our province to do."

"It has been often held, at least in actions at law, that this court has no jurisdiction to reverse the decision of the highest court of a State upon a pure question of fact, *although a Federal* question might arise if the question of fact were decided in a particular way," citing *Dower* v. *Richards.*

All conceded, but here the United States Government plats and field notes have been overturned, without any competent evidence, because conceding the truth of all the oral evidence (See p. 55 of plaintiff in error's brief) there is nothing in such testimony inconsistent with absolute correctness of such plats, from which plaintiff in error's riparian rights flow.

Kean v. *Calumet Canal & Imp. Co.,* 190 U. S., 452.

6. *Hardin* v. *Shedd,* 190 U. S., 508.

How these cases came to be cited as an authority against plaintiff in error we respectfully suggest our in-

ability to see. They were on writ of error from the State court and the jurisdiction was maintained and judgment affirmed on authority of *Hardin* v. *Jordan,* the principal case on which plaintiff in error relies on the merits.

Mr. Justice White in dissenting opinions expresses doubt as to Federal jurisdiction, but Mr. Justice White has dissented in most of principal cases relied on by plaintiff in error, seeming to entertain the view that because the Supreme Court of the United States must apply the local law as to riparian rights after upholding the correctness of ancient government surveys, there is no Federal question. Can it be that a dissenting opinion in a case upholding plaintiff in error's contention both on jurisdiction and merits can be made the basis of a ruling dismissing a writ of error, because two distinguished members of this court dissent?

7. *Romie* v. *Casanova,* 91 U. S., 379.

This is a sixteen line opinion by Chief Justice Waite holding that both parties to controversy admitting the same title in City of San Jose, no Federal question was involved. In the case at bar the parties so far from admitting the same title to the *locus in quo* in the State of Arkansas, each claimed a different title through the Government patent to the State, one by riparian rights and the other claiming the place as swamp land.

8. *Horne* v. *Smith,* 159 U. S., 40; *Niles* v. *Cedar Point Club,* 175 U. S., 300; and other cases cited against us on the merits are fully distinguished at pages 89 to 91 of original brief (see also *Whitaker* v. *McBride,* 197 U. S., 514), and *Iowa* v. *Rood,* 187 U. S., 87, at page 13 of reply brief or plaintiff in error.

VII.

Because the ruling of the Secretary of the Interior on application of the St. Francis Levee District, donee of State lands and grantor of defendants in error, that the *locus in quo* was not Swamp Land under grant of 1850, but was water according to official plats, surveys and field notes, was not *res inter alios,* but a finding of fact within the clear jurisdiction of Land Department under acts of Congress.

VIII.

Because jurisdiction should be retained by this court of this cause and all doubts resolved in favor of petitioner in error and the United States be invited to intervene and set up its title to the *locus in quo,* that litigation should be ended and the titles finally settled to all these bottoms of what were at the time of government surveys non-navigable lakes and ponds formed by the "sunk lands" of the New Madrid earthquake of 1811 in the State of Arkansas.

In the case of *Whittaker* v. *McBride,* 197 U. S., 510, on writ of error from the Supreme Court of the State of Nebraska, which goes much farther than is necessary to sustain plaintiff in error's contention on the merits in this case, Justice Brewer in the opinion says:

"It must also be noticed that the government is not a party to this litigation, and nothing we have said is to be construed as a determination of the power of the government to order a survey of this island, or of the rights which would result in case it did make such survey. As we reserve the rights of the United States we do not even impliedly sanction the intimation contained in the opinion of the court below that, under the decision in *Hardin* v. *Jordan,* 140 U. S., 371, although, on non-navigable waters, riparian rights were not conferred by the State law, nevertheless the land beyond the banks

passed to the State in virtue of the patents of the United States to the lot owners. Upon that question we express no opinion."

No court in Christendom save this court can pass finally on the questions involved in this suit.

The Supreme Court of Arkansas in its opinion clearly in effect leaves the title to the *locus in quo* in the United States; the United States, through its Land Department in an opinion approved by Judge Willis Van Devanter, then law officer of the Land Department, has finally disclaimed any title in the United States. Many cases are pending in the State courts of Arkansas, and in the Federal Courts in Arkansas, involving this identical question; if a rehearing be ordered and the Attorney General be invited to intervene in behalf of the United States, much vexatious litigation will be avoided.

What more appropriate case than this one involving title to the very *locus in quo,* in regard to which the Land Department has repeatedly rendered opinions, both on applications for United States surveys, and on complaints of the agents of the Land Department of trespassing and timber cutting on Government lands.

And your petitioner prays, therefore, that an order be made for a rehearing of the argument in this case, on a day to be appointed by this court, and upon such points as the court may direct.

Respectfully submitted,

HENRY D. ASHLEY,
WILLIAM S. GILBERT,
DENTON DUNN,
ROBERT S. RODGERS,
Counsel for Plaintiff in Error.

I certify that in my opinion the foregoing petition for rehearing is well founded in point of law.

HENRY D. ASHLEY.
Of Counsel.

This Map is based on a map published by RAND McNALLY & Co in 1902 and is intended only to show the relative positions of the "Hatchie Coon Sunk Lands" or Lake and "Big Lake," as said lakes are meandered thereon; "Big Lake" being the locus in quo in Harrison v. Fite 148 Fed. Rep. 781.

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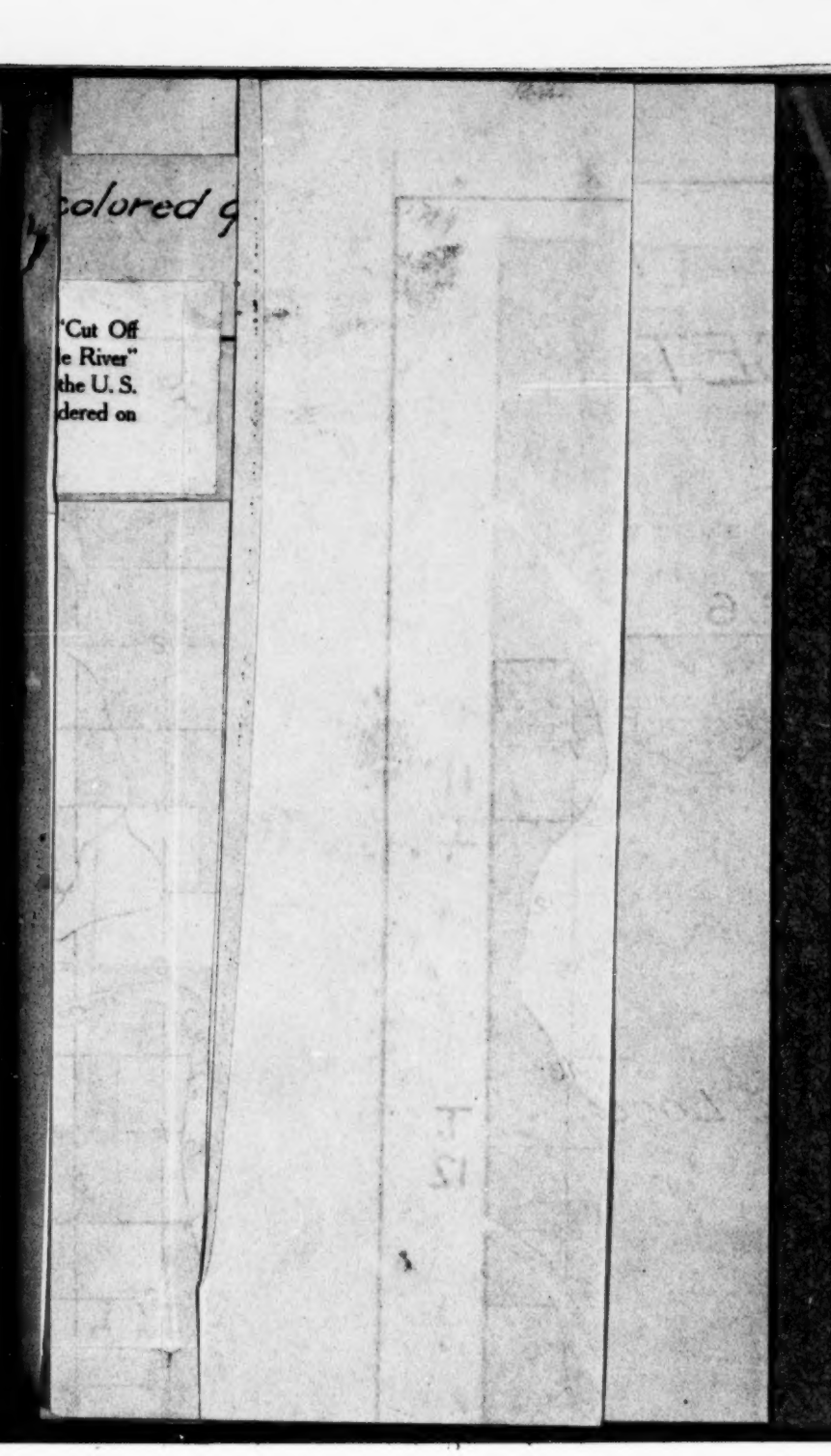
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BRIEF.

The lands involved in this litigation lie in Township 12 north, Range 6 east, in the northeastern part of the State of Arkansas. The claim is that they are accretions to the adjacent surveyed lands; or, that the riparian rights of the owner of the adjacent surveyed land (plaintiff in error) are broad enough to include the lands involved, whether made by accretion or not.

It is held by this Court, in Hardin vs. Jordan,

140 U. S., 371, that where a patent is issued for land bounded by a lake or stream, the title to the land under the water passes from the Government.

Two patents appear in the record in this cause. They are each in favor of the State of Arkansas—one for Township 12 north, Range 6 east; the other for Township 12 north, Range 7 east. Under the rule laid down in Hardin vs. Jordan, the title to the land under the water in these townships passed incidentally, upon the issuance of these patents, to the State of Arkansas.

Both parties to this litigation claim under the State of Arkansas—the patentee—and it follows that the existence of a Federal question is impossible.

Mace vs Merrill, 119 U. S., 581, 7 Sup. Ct. Rep., 330.

Hastings vs. Jackson, 112 U. S., 233, 5 Sup. Ct. Rep. 113.

"In our judgment, the grants of the Government for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed, as to their effect, according to the law of the State in which the lands lie."

Text, in Hardin vs. Jordan, supra.

In Mitchell vs. Smale, 140 U. S., 406, we find pertinent expressions, as follows:

"Cases have happened, in which, by mistake, the meander line described by a surveyor in the field notes of his survey, did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government. Nor do we mean to say, that in granting lands bordering on a non-navigable lake or stream, the authorities might not formerly, by express words, have limited the granted premises to the water's edge, and reserved the right to survey and grant out the lake or river bottom to other parties. *But since the grant to the respective States of all swamp and overflowed lands therein, this cannot be done.*"

In Kean vs. Calumet Canal Co., 190 U. S.. 480, the title to the submerged portion of a fractional section, patented "as a whole," was held to pass *by the patent.*

An application of the principle to the case at bar, gives to the State of Arkansas, through the patents, the submerged portions of these townships. They were each conveyed "as a whole," as in Kean vs. Calumet Canal Co. the section was conveyed.

The submerged portions *fall within the limits of the patents.*

Where the boundaries of the patent do not in terms cover the adjacent submerged lands, they nevertheless belong to the State as incidental to its sovereignty. Iowa vs. Rood, 187 U. S., 87.

Where the submerged portions are covered by the descriptions in the patent, they pass by virtue of the patent--according to the case next to the last cited.

In this case the distinction is without importance.

It is sufficient for the present purpose that the title to the bed of the meandered water passed to the State of Arkansas.

WAS THE LAND AT THE TIME OF THE SURVEY PERMANENTLY SUBMERGED, OR ONLY TEMPORARILY UNDER WATER.

While in many cases this question has been one of prime importance, it is not necessarily so here. It is a question of fact.

Furthermore, no matter how the question of fact is decided, still the State of Arkansas acquired the title. If submerged land at the time, the manner of acquisition has been shown; if not submerged, it passed under the patent for the "whole of fractional Township" 12 north, Range 6 east. (Printed record, 35.)

When a patent is granted for a township of

land, it is elementary that all land within the township becomes the property of the grantee, regardless of acreage, and regardless of the extent to which it may have been subdivided into sections.

Quantity gives way to metes and bounds.

Ayers vs. Watson, 113 U. S., 594.

The surveyors meandered Old River. They—judging from the field notes—made no pretense of knowing what was in the interior of the meandered portion. From the proof of large timber now abounding, much of that interior was land, but swamp land, to which the State of Arkansas was entitled under the Act of September 28, 1850. Consequently no injustice was done the Government by the issuance of the patent for the whole township, even though it contained as a fact, a much greater quantity of land above water than the surveyors laid off in sections and computed.

As the patents issued for the townships, there is no need to refer to the passing of title *in praesenti* under the Act of September 28, 1850.

OF THE PLAINTIFFS' CLAIM.

It owns the fractional sections and parts of sections surrounding the unsurveyed portions. These fractional parts it holds under the State of Arkan-

sas, and contends, that by reason of this holding it is entitled to the large body of land meandered out:

1. On the ground that the meandered lands were built up by imperceptible additions to its lands. (Printed record, 27.)

2. By riparian rights. (Printed record, 30.)

A claim of accretions presents no Federal question. It is a common law right, when the fact is established. The right to accretions is included in "riparian rights." It follows that the question of riparian rights is the single question involved.

Riparian rights are matters of local law.

Hardin vs. Jordan, 140 U. S., 371.
Shively vs. Bowlby, 152 U. S., 45.
Lowndes vs. Huntington, 153 U. S., 19.
Hardin vs. Shedd, 190 U. S., 518.
Mobile Trans. Co. vs. Mobile, 187 U.S., 485.

Plaintiff in error is not the patentee of the Government—the State of Arkansas is, and it acquired the title to the entire township.

Plaintiff in error is the grantee of the State of Arkansas, (not immediately,) as to the fractional parts of sections abutting on the meander line, and the State in its determination of the rights passing to its grantee, will not be controlled by this Court. It does not follow, because the State by the patent

for the township acquired the township, that the plaintiff in error, by buying up the surveyed fractional sections, became the owner of the township.

The contention can hardly be said to possess plausibility; but if it did, to the point of probable merit, still the question would clearly be one of local law.

A decision of a State Court adverse to a claim of title to a lake bed, presents no Federal question which will sustain a writ of error from the Supreme Court of the United States.

Iowa vs. Rood, 187 U. S., 87, 23 Sup. Ct. Rep., 49.

That the Chief Justice of the State allowed the writ, does not help out, (Hulbert vs. City of Chicago, 202 U. S., 275, 26 Sup. Ct. Rep., 67,) nor can the assignments of error or petition for the writ be looked to for a determination of the existence of a Federal question.

Montana vs. Rice, — U. S., —, 27 Sup. Ct. Rep., 281.

Findings of fact by the trial court affirmed by the Supreme Court of the State, are conclusive on this court.

Minneapolis & St. L. R. Co. vs. Minnesota, 193 U. S. 53, 24 Sup. Ct. Rep. 396.

THE MEANDER LINES WERE RUN AS BOUNDARIES.

Whether they were or not, might be a proper subject of inquiry, if on the surveyed side, one party claimed under the Government by one right, and on the unsurveyed side, the other party claimed under the Government by another right, as in French-Glenn Live Stock Co. vs. Springer, 185 U. S. 47, 22 Sup. Ct. Rep. 563, and Wright vs. Roseberry, 121 U. S. 488, 7 Sup. Ct. Rep. 985. In those cases conflicting rights under the Government being set up, it was held that this Court had jurisdiction. In the case at bar, by the patent to the State for the township as a whole, everything in the township regardless of the location of the line, passed, whether run as a boundary or not.

And if in this case the rights of the parties were subject to adjudication in this Court, the first query would be the extent of the rights of the plaintiff in error by reason of its ownership of the fractional parts of sections abutting on the meander line.

This would have to be ruled by the laws of the State of Arkansas.

The rules of no other sovereign can be invoked.

But the decisions of this Court lead to the same result.

The lines were run as boundaries, under the rule in Smith vs. Horne, 159 U. S., 40, and Niles vs. Cedar Point Club, 175 U. S., 300.

Furthermore, the bill alleges (Print. Rec. 24 & 25) and the answer admits (Print. Rec. 78) that the lines were run as boundaries.

These meander lines, being boundaries, could well be adjudged the limit of the rights of plaintiff in error, either in the Courts of the United States or the Courts of the State of Arkansas.

And being boundaries, the rule laid down in Kean vs. Calumet Canal Co., *supra*, could not be invoked by plaintiff in error as to submerged portions of its tracts—a claim it has not made, however.

Likewise, in the Courts of either sovereign the question of accretions would be decided against plaintiff in error.

The proof shows that at many points, to say the least, there was high land in the unsurveyed territory; and, as in People vs. Warner, 74 N. W., 705, if any land has been newly made by accretion or reliction, it has attached to these high bodies rather than to the fractional sections of plaintiff in error, from which they were separated by Old River and Cut Off Lake.

Plaintiff in error can recover only on the strength of its own title.

Hardin vs. Jordan, 140 U. S., 371.

Lawrence vs. Zimpleman, 37 Ark., 644.

Kelly vs. Laconia Levee Dist. 74 Ark. 202

OF THE LETTER FROM THE SECRATARY OF THE INTERIOR TO THE COMMISSIONER OF THE GENERAL LAND OFFICE.

A letter written by the Secretary of the Interior to the Commissioner of the General Land Office, November 17, 1902, is shown in the Printed Records at p.p. 111–115.

This was offered in the trial Court by plaintiff in error as evidence to sustain its claim, and was excluded.

The Supreme Court of the State held the exclusion proper.

It is inconceivable that correspondence between officials could affect the property rights of litigants.

It is submitted that the appeal should be dismissed.

Respectfully,

N. W. NORTON,

Counsel for Defendants in Error.

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ADDITIONAL BRIEF FOR DEFENDANTS IN ERROR.

ADDITIONAL BRIEF.

Having received the brief of the plaintiff in error, the defendant in error will now file an additional brief and argument in response thereto.

Plaintiff in error being the owner of Fractional Sections 2, 3 and 4, on the north, and 35 and 36 on the southeast, in Township 12 north, Range 6 east, claims in this suit the intervening land—some five miles across from north to south, bounded on the west by the St. Francis River, and on the east, some

four or five miles distant from the river, by surveyed lands belonging to the plaintiff in error. The land, several thousand acres in quantity, is colored red on the map attached in the back of the brief filed for plaintiff in error. A meander line, made by the government survey, appears on all sides except the the west, which is the river line.

OF THE CLAIM BY ACCRETION AND RELICTION.

The claim of the plaintiff in error, originally made, was that this body of land was formed against its abutting fractional sections by accretion and reliction, as shown by the following excerpt from the complaint:

"Afterwards, by process of accretion in some instances and reliction in others, the line of said tracts of land which border on the water was gradually extended, and the said tracts of land and each of them were gradually built up by the imperceptible increase thereof, caused by the deposit of earth, sand and sediment thereon by the contiguous water, so that the land now extends a considerable distance further towards the main channel of the river, and there is now outside of and beyond the original lines of said survey, as above set out, and east of the main channel of the St. Francis River, a con-

siderable body of land adjacent to each of the tracts hereinbefore mentioned, and forming a part thereof and accruing to the plaintiff by reason of the accretion and reliction aforesaid and by the nature of the conveyances above set out." (Printed Record, 27 and 28.)

This allegation of accretion and reliction is denied in the answer:

"These defendants deny that by process of accretion the line of said tracts bordering on the water was gradually extended, and deny that said tracts and each of them were gradually filled up by the imperceptible increase caused by the deposit of earth, sand or sediment, and deny that the land named extends a considerable distance further towards to main channel of the river, the fact being that the land at all times extended toward the main channel of the river, though at times overflowed, as it yet is at times." (Printed Record, 78–9.)

In an effort to prove the fact of accretion and reliction, the plaintiff in error introduced the depositions of Peters, Davis and Varner. To meet this proof and combat it, the defendant in error introduced the depositions of John M. Biggs, Chas. S. Odom and James Anthony. The tendency of this testimony on the part of the defendants in error was

to show the nature of the land, timber and vegetation, and the extent to which it included sloughs and small lakes, to show that it was substantially the same as it was at the time of the survey, and that at the time of the survey it was land only temporarily covered with water. This testimony, though responsive to that introduced by the plaintiff in error, stands excepted to as contradictory of what is shown by the government plat.

Plats and surveys are not conclusive.

Horne vs. Smith, 159 U. S., 40.

Niles vs. Cedar Point Club, 175 U. S., 300.

Here, however, the testimony does not dispute the surveyor's notes, which are to the effect that the body could not be surveyed at the time he was there. (Printed Record, 115.)

The claim by accretion or reliction stands abandoned, as we understand from the following language in the brief of plaintiff in error, on page 14:

"The unsurveyed region claimed by plaintiff in error, up to the channel of St. Francis River, being unnavigable, the accretion and reliction allegations in the complaint become unimportant, and the evidence to show present conditions and gradual filling up also become unimportant. Plaintiff in error claims by riparian right the bottom to the channel

of the St. Francis River, wet or dry, hence there is no occasion to abstract the depositions of Peters, Davis and Varner, as to present conditions and gradual filling up."

While this claim existed it raised no Federal question.

THE MEANDER LINES WERE RUN AS BOUNDARIES.

That they were run as boundaries, is several times alleged in the complaint. Of the line of Hatchie Coon Island, the allegation is: "The body of land surveyed as last aforesaid lies at the southern point of an island in the Sunk Lands of the St. Francis River, known as Hatchie Coon Island. The survey in meandering the southern boundary of this island calls for the margin of the water as the boundary in all cases."

It is to be noted that this is not a call for the River, but for the Sunk Lands of the St. Francis River.

Of the right hand chute of Little River, in Section 36, the allegation is: "This chute was meandered for a boundary of the western and northern lines or boundaries of the land in Section 36, lying east thereof." * * * * * "That part of Section 36 lying west of said chute was meandered along said chute for an eastern boundary, and along

'Cut Off Lake' for a northern boundary." * * * * "In surveying Section 35, the Sunk Lands and said 'Cut Off Lake' were meandered for the northern and western boundary."

"In said survey Section six, (6), seven, (7), eighteen, (18), nineteen, (19), and thirty, (30), in Township twelve, (12) north, range seven, (7), east were meandered along the water, the field notes calling for the margin of the Sunk Lands of the St. Francis River as a boundary." (Printed Record, pp. 24 and 25.)

This meander line last mentioned is, by the testimony of George C. Peters, a witness for plaintiff in error, along Old River. His language, is: "At the time I was there the water was just about waist deep in it, and it has always been my idea that when the government made their survey they meandered Old River." (Printed Record, 93).

James Anthony, a witness for the defendant in error, gives testimony to the same effect: "The meander line through Section 6, 7, 18 and 19, on down until the meander line intersects the 'Scatters,' follows the old steamboat channel known as the 'Old River' channel. Long years ago the 'Old River' channel was opened and navigable for boats, and during the Fall of 1876 was used as a

clearer and better channel than the main St. Francis." (Printed Record, 130).

As these surveys followed Cut Off Lake, the right hand chute of Little River and Old River, they were clearly boundaries, under the rule laid down in Horne vs. Smith, 159 U. S.. 40.

Anyhow, the allegation was made that they were run as boundaries, and the answer admits it to be true:

"It is true that said lands and the legal subdivisions were meandered, but these meandered lands (meander lines) even where they called for the St. Francis River, were many miles distant from the said river, and were run as boundaries." (Printed Record, 78.)

Thus, as a matter of pleading, as well as a matter of fact and law, the meander lines were boundaries.

Plaintiff in error, however, now contends that they were not, in the following language:

"The truth, however, is that the meander lines were run, not as boundaries, but to show the sinuosities of the water, which was the real boundary; and whatever rights the State acquired beyond the water line were riparian rights, incident to the main grant, and passed from the State to its grantees as

riparian owners, in the same way that they were acquired by the State." (Brief for Plaintiff in Error, page 63.)

A contention about boundaries, however, raises no Federal question.

Lanfear vs. Hunley, 4 Wall.: 204.
Moreland vs. Page, 20 How., 522.
Barbarie vs. Mobile, 9 How., 451.
Almonester vs. Kenton, 9 How., 1.

In one aspect of the case, it is apparently immaterial whether the meander lines were run as boundaries or not. In any event, the extent of the rights acquired by the purchaser from the State of the fractional abutting sections, would be determinable by the general law, or the particular law of the State. But, with the lines run as boundaries, a purchaser of the fractional sections from the Government would take nothing beyond the meander line; and the State in disposing of the fractional sections could well adopt a similar rule, and allow its grantee no greater right than a purchaser from the Government.

OF THE CLAIM OF THE PLAINTIFF IN ERROR.

It acquired the fractional sections through mesne conveyances from the State of Arkansas. Its

claim is that it owns the many miles in width outside the fractional sections and between them and the St. Francis River.

Running through the brief of plaintiff in error we find the view entertained that if the State of Arkansas acquired the title to the lake bed, that this same lake bed necessarily passed to plaintiff in error by the purchase of the fractional sections. In short, the idea is held out, though not stated in express terms, that the title of the plaintiff in error to the unsurveyed lands is as good as that of the defendants in error. An argument built upon this premise must fall, for it overlooks the rule of law which requires the plaintiff in error to first show title, before it can concern itself, advisedly, with defects in the title of the defendant.

The title of the State to the unsurveyed lands is beyond dispute.

First: If the alleged lake was a body of water, at the time of the survey, it became the property of the State by reason of its sovereignty, regardless of patents.

Second: If submerged land, it became the property of the State by being within the limits of the patent, as held in Keen vs. The Calumet Co., 190 U. S. 452, and

Third: If land at the time, and not submerged,

it still passed by the patent for township 12, north, range 6 east, "for which the Governor of the State of Arkansas did, on the 20th day of October, one thousand, eight hundred and fifty-three, request a patent to be issued to the said State as required in the aforesaid act." (Printed Record, 35).

The patent says nothing of sections or parts of sections.

So the township was selected and patented in strict compliance with the requirements of the Swamp and Overflowed Land Act.

Hence, it is a mistake to say that these lands have never been selected as swamp and overflowed land, and a misconception to suggest that the title to them could be in the United States.

In speaking of the rule which requires quantity to give way to natural objects and metes and bounds, Judge Marshall, said: "The general effect of this principle undoubtedly is, that the purchaser acquires more land than is expressed in his grant, and more than he has paid for."

Newsom vs. Pryor's Lessee, 7th, Wheat, 194.

There we see the rule is enforced even when it gives the grantee more than he was entitled to. As between the government and the State of Arkansas, however, the State was entitled to all the

swamp and overflowed lands, and no injustice was done the government, if as a fact, there was a greater quantity of land within the boundaries of the township, than the surveyors laid off in fractional sections.

A Claim of Riparian Rights Presents No Federal Question.

The plaintiff in error was denied his claim to the unsurveyed portions of the township and the question is, did the denial of the claim include a denial of any right through any treaty or federal authority. That riparian rights raise only questions of general law is entirely settled. If the plaintiff in error held the fractional sections as the direct patentee of the United States, still its title to submerged lands adjoining, would be governed by the law of the State. This proposition was reiterated by this Court in Hardin vs. Shedd, 190, U. S., 508; 23 Sup. Ct., Rep., 685. In the text of the opinion the Court says of the rule: * * * "It has become established almost without argument * * *", citing,

Hardin vs. Jordan, 140 U. S., 371.
Shively vs. Bowlby, 152 U. S., 1.
Grand Rapids & I. R. Co., vs. Butler, 159 U. S., 87.
St. Anthony Falls Water Power Co., vs. St. Paul Water Works Com'rs. 168 U. S., 349.

A decision of a State court, adverse to a claim of title to a lake bed, presents no Federal question which will sustain a writ of error from the Supreme Court of the United States.

Iowa vs. Rood, 187 U. S., 97;
23 Sup. Ct. Rep., 49.

The writ of error to the State court was dismissed.

A decision of the State court adverse to the claim that under Mexican and Spanish grants, confirmed and patented under the Act of Congress of March 3d, 1851, the owners of the land were entitled to riparian rights and subterranean waters, involves no Federal question reviewable in the Supreme Court of the United States, where the validity of such act was not drawn in question

Hooker vs. Los Angeles, 188 U. S., 314; 23 Sup. Ct. Rep., 395.

The writ of error was dismissed.

This Court is not called on to revise the views of the principles of general law considered applica- to the case in hand.

Sayward vs. Denny, 158 U. S., 180; 15 Sup. Ct. Rep., 777.

A Common Source of Title.

On writ of error to a State court, a common source of title has always been fatal to the jurisdiction of this Court.

It is the view of the defendants in error that the parties to this litigation have a common source of title.

This view is concurred in and twice expressed by plaintiff in error.

"Plaintiff in error and defendants in error claim under a common source of title—the State of Arkansas." (Brief of Plaintiff in Error, p. 97.)

"Plaintiff in error and defendants in error claim under a common source of title--the State of Arkansas." (Brief of Plaintiff in Error, p. 100.)

This being settled, it remains to apply the law.

In Shaffer vs. Scudday, 19 How., 16, both parties claimed under the State of Louisiana. The writ of error was dismissed.

In Romie, et al, vs. Casanova, 91 U. S., 379, the entire opinion of Chief Justice Waite is as follows:

"No Federal question is presented by the record in this case. The action was brought to recover the possession of certain lands. Both parties claimed title from the city of San Jose; and the question to be determined was, which of the two had actually obtained a grant of the particular premises in controversy. The title of the city was not drawn in question. Even if it depended upon the treaty of Guadaloupe Hidalgo and the several Acts of Con-

gress to ascertain and settle private land claims in California, the case would not be different. Both parties admit that title, and their litigation extends only to the determination of the rights which they have severally acquired under it. The writ is dismissed."

In a suit for the recovery of lands, where both parties claim under a common grantor, whose title from the United States is admitted, the Supreme Court of the United States has no jurisdiction for the review of the decisions of the State courts upon questions relating only to the title acquired by the several parties.

Hastings vs. Jackson, 112 U. S., 233; 5th Sup. Ct. Rep., 113.

In McStay vs. Friedman, 92 U. S., 723, certain lands were confirmed to the city of San Francisco by an Act of Congress. In ejectment for a portion tion of them, no question being raised as to validity or operative effect of the Act of Congress, it was held there was no jurisdiction in this Court to review the decision of the Supreme Court of the State of California.

In Mace vs. Merrill, 119 U. S., 581, 7th Sup., Ct. Rep., 330, error to the Supreme Court of California, this Court held there was no jurisdiction,

and the writ of error was dismissed, both parties claiming under that State

Of the Letter from the Secretary of the Interior to the Commissioner of The General Land Office.

The incompetency of this letter passing between officials, would be plain to plaintiff in error, if opposed to its contentions. For example, if the Secretary of the Interior had known that the Township was patented to the State as a whole, and that the meander lines were run as boundaries, and, in consequence, had expressed the opinion that the owner of the fractional sections acquired no rights to the unsurveyed lands, the point of view would have been materially changed and the want of binding qualities in the letter would have been easily realized.

Here, there was no attempt on the part of the Secretary of the Interior or Commissioner to settle anybody's rights. There was nothing pending before the department.

Acts of the department have frequently been said to raise no Federal question, even where there had been some character of actual ruling.

The fact that a decision was rendered by the Secretary of the Interior upon the validity of loca-

tion by one of two claimants in the State Court, does not raise a Federal question so as to give this Court jurisdiction.

Shaffer vs. Scudday, 19 How., 16.

In Hardin vs. Jordan, 140 U. S., 371, it was held that the action of the Department in surveying and granting land formerly submerged, was not *res adjudicata* as against one claiming under the earlier patent, though he appeared before the Department and resisted its action.

In Iowa vs. Rood, 187 U. S., 87, it was held that the action of the government surveyors in segregating and setting apart a lake by a meander line from the public land, is not such an adjudication by the authorized officers and agents of the Government that such lake is the property of the State, as will cause a Federal question, reviewable on writ or error to the Supreme Court of the State.

The writ of error should be dismissed.

Respectfully submitted.

N. W. NORTON,

Counsel for Defendants in Error.

Supreme Court of the United States.

No. 262.—October Term, 1906.

The Chapman and Dewey Land Company, Plaintiff in Error, *vs.* Charles H. Bigelow, N. P. Bigelow, L. P. Walker, and F. H. Hartshorn.	In error to the Supreme Court of the State of Arkansas.

[May 13, 1907.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was a bill to remove a cloud from plaintiff in error's alleged title to certain lands described in the complaint, and to that end to have the conveyances under which defendants in error claimed declared void, filed by plaintiff in error in the Chancery Court of Poinsett County, Arkansas, January 29, 1903. The Chancery Court rendered a decree dismissing the bill, and the case was carried to the Supreme Court of the State, where the decree was affirmed. 92 S. W. Rep. 534. Thereupon this writ of error was allowed.

The Supreme Court of the State stated the case in brief thus:

"Plaintiff claims title under an act of Congress entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,' approved September 28, 1850. It alleges that, in pursuance of the provisions of this act, surveyed sections and parts of fractional sections in fractional township 12 north of the base line, in range 6 east of the fifth principal meridian, and in township 12 north of the base line, in range 7 east of the fifth principal meridian, and in Poinsett County, in this State, were duly selected, approved, and patented to the State of Arkansas, as a part of the swamp land-grant; that certain of these lands were conveyed by the State of Arkansas, on the 12th day of June, 1871, to Moses S. Beach, that plaintiff acquired and is the owner of these lands so conveyed to Beach as well as certain other of the lands which were deeded to the State of Arkansas by the United States; that many of the legal subdivisions of sections so acquired by plaintiff were bounded by a large body of non-navigable water called in the official surveys of the United States and field notes thereof as the 'Sunk Lands,' 'St. Francis River Sunk Lands,' the 'Hatchie Coon Sunk Lands,' and the 'Cut-Off Lake;' that the legal subdivisions so bounding were fractional, and in the survey were meandered along such body of water. The plaintiff thereupon claims the lands lying under this body of water; and these are the lands in controversy in this suit to which it (plaintiff) seeks a decree to quiet its title as against the defendants.

"Plaintiff alleges that these lands are wild, unimproved, and unoccupied; and that the defendants are claiming them under certain deeds; and asks that these be declared void, invalid, and of no force whatever.

"The defendants answered and denied that the so-called 'Sunk Land' was a body of water, or that it is shown to be by the surveys of the United States or the field notes; but that it was sometimes temporarily flooded with water, and was land bearing 'trees and vegetables, willow and cypress;' and that the meandered lines run as alleged by plaintiff were run as boundaries, and not for the purpose of finding the number of acres in the sections or legal subdivisions 'for which purchasers would have to pay when the government might dispose of the land.'"

Defendants' answer and cross bill asserted that in the year 1893 the State of Arkansas, by an act of its legislature, "created the board of directors of the St. Francis Levee District, the purpose being to erect a levee against the waters of the Mississippi River and protect what is known as the St. Francis Basin from overflow by the Mississippi River; that the lands concerning which plaintiffs bring this suit, and cross complainants file this cross bill, are a portion of the said St. Francis Basin and are originally and naturally subject to overflow from the Mississippi River. That after creating the board of directors of the St. Francis Levee District, the State of Arkansas, by its legislature, to aid in the erection of said levee, granted to the board of directors of the St. Francis Levee District lands within said district, the title to which was in the State of Arkansas; that this act of donation by the legislature of the State of Arkansas went into effect on the 29th day of March, 1893, and thereby the legal title to the unsurveyed lands in township 12 north, range 6 east, and township 12 north, range 7 east, became vested in the board of directors of the St. Francis Levee District;" and that thereafter the said board of directors conveyed to defendants' predecessors in title.

The Supreme Court, among other things, said that appellant claimed "the land in controversy by virtue of the contiguity of certain lands, acquired by it from the United States, through the State of Arkansas and other grantors, to what is called 'Sunk Lands' and 'Cut-Off Lake.' This 'Sunk Lands,' from appellant's land on one side to the St. Francis River, a navigable stream, on the other, is there four and six miles wide. In this area there are over ten thousand acres." That "the official maps show that Cut-Off Lake was the water boundary of fractional sections 35 and 36," which, with sundry other fractional sections, formed "the western boundary of what is called 'Sunk Lands,' in controversy."

The patents to the State of Arkansas conveyed "the whole of fractional township" 12 north, range 6 east; and "the whole of the township except section sixteen," T. 12 N., R. 7 east.

The Supreme Court referred to and quoted from *Horne* v. *Smith*, 159 U. S. 40; *French-Glenn Live Stock Company* v. *Springer*, 185 U. S. 47, and

Niles v. *Cedar Point Club*, 175 U. S. 300; and ruled that in an action to quiet title to wild and unoccupied lands, which the court found these were, plaintiff must succeed, if at all, on the strength of his own title, and not on the weakness of his adversary's; that swampy lands, checked by bayous, subject to inundation, but reclaimable to some extent for agricultural purposes, lying between the Government meander line and the main channel of a river, were not lands the title to which would pass to the grantee by virtue of riparian rights; that such was the character of the lands in controversy, and that plaintiff had failed to show such a condition in respect of them as would support its claim to riparian rights; that the evidence showed that the elevation of the swampy land between the meander line of plaintiff's land and the main course of the St. Francis River had not changed since the running of the meander line; and that the meander lines were boundaries.

In view of the decisions of this court in *Horne* v. *Smith*, 159 U. S. 40; *Miles* v. *Cedar Point Club*, 175 U. S. 300; *Calumet Canal and Improvement Company* v. *Kean*, 190 U. S. 452; *Iowa* v. *Rood*, 187 U. S. 87; and other cases, and of the findings of the court below, we are of opinion that the jurisdiction of this court to revise the conclusions of that court cannot be maintained. *Moreland* v. *Page*, 20 How. 522; *Lanfear* v. *Hunley*, 4 Wall. 204; *Dower* v. *Richards*, 151 U. S. 658; *Egan* v. *Hart*, 165 U. S. 188; *Israel* v. *Arthur*, 152 U. S. 355; *Hardin* v. *Shedd*, 190 U. S. 508; *Romie* v. *Casanova*, 91 U. S. 379.

The result is unaffected by the exclusion from the evidence of a letter written by the Secretary of the Interior to the Commissioner of the General Land Office, November 17, 1902. It was clearly *res inter alios*, and properly rejected, and the ruling presented no Federal question.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.